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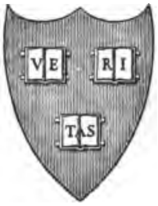

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Central provinces, India. Laws, statutes,
etc. # Tax law

THE

CENTRAL PROVINCES
LAND-REVENUE ACT, No. XVIII OF 1881

*(As Amended by Act, No. XVI of 1889
and Act XII of 1898).*

WITH
Explanatory Notes, Rulings of High Courts in
India, cases decided by the Court of Judicial
Commissioner C. P. under the Act,
Executive instructions issued
and rules framed under the
Act, by the Chief
Commissioner,
C. P.
&c. &c.

BY

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OF THE LINCOLN'S INN, ESQUIRE, BARRISTER-AT-LAW.,
ADVOCATE, HIGH COURT, ALLAHABAD
AND
of the Court of Judicial Commissioner,
Central Provinces.

FIRST EDITION

PRINTED AT THE "CENTRAL-LAW-PRESS"
CHHINDWARA,

1906

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India: Central Provinces and Berar: Separate Acts

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PREFACE.

During the last year, at intervals, now long and now short, I have through the guidance of my good and kind uncle, *Rai Saheb*, Mathura Prashad, Pleader collated in the following pages a large number of rulings both of the Local and other Indian High Courts bearing on the various provisions of the Central Provinces Land-Revenue Act (XVIII of 1881 as amended by subsequent enactments), the rules and instructions made and issued under it by the Local Government.

In the present Edition no attempt has been made to comment on difficult and doubtful expressions, but it is hoped that the Act has been made intelligible and easy to understand by the insertion of useful matter, important orders issued by the Local Government for the guidance of Revenue Officers and a comparison of analagous provisions in force in others Provinces.

There is, no doubt, a good deal which requires improvement and if occasion comes for a Second Edition, no pains will be spared to make the book as thorough and exhaustive as possible.

Any suggestions from the readers will be very thankfully received.

I may, however, express a hope that it will be found useful as a book of reference to the members of the Bench and Bar and Revenue officers in the Central Provinces.

Chhindwara. } H. L. VERMA.

25th March 1906.

LIST OF ABBREVIATIONS.

A. C. J.	Appellate Civil jurisdiction.
All.	Allahabad.
B. L. R.	Bengal Law Reports.
Beng. L. R.	Bengal Law Reports.
Bom. H. C. R.	Bombay High Court Reports.
Camp.	Campbell's Reports.
C. B.	Common Bench reports.
C. L. R.	Calcutta Law reports.
C. P. L. R.	Central Provinces Law reports.
Cal.	Calcutta.
C. W. N.	Calcutta Weekly Notes.
Exch.	Exchaquer Reports.
F. B.	Full Bench Rulings.
H. C. R.	High Court Reports.
I. L. R. All.	Indian, Law Reports Allahabad.
I. L. R. Bom.	„ „ Bombay.
I. L. R. Cal.	„ „ Calcutta.
I. L. R. Mad.	„ „ Madras.
L. R. C. P.	Law reports common pleas.
M. I. A.	Moors Indian appeal.
N. W. or N. W. P.	Reports of cases by the High Courts N. W. P.
P. R	Punjab record.
W. R. or S. W. R.	Sutherland's Weekly Reports.

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155. Restriction on revenue and Settlement Officers trading and holding land.
156. When mahal managed or farmed, or upon proclamation under section 98 or 103, rent payable to Deputy Commissioner.
Payment to proprietor in anticipation of due date.
157. Recovery of balances due by farmers.
157-A. Recovery of miscellaneous revenue.

Sections. 158. Recovery of revenue due when Act comes into force and of money payable under Act-
159. Past proceedings for collection of revenue legalized.
160. Chief Commissioner may empower persons by name, or confer powers on classes-
161. Chief Commissioner may vary or cancel orders.
161-A. Penalty for failure to perform duty or abuse of authority by mukaddam or agent.
161-B. Penalty for neglecting or disobeying orders of mukaddam or agent.
162. Chief Commissioner may make rules and attach penalty to breach thereof.

SCHEDULE.—[*Repealed*]

Printed at the " Central Law Press"
Chhindwara. (C. P.)

THE
CENTRAL PROVINCES
LAND REVENUE ACT, NO XVIII OF 1881
(As Amended by Act No XVI of 1889
and Act XII of 1898.)

PASSED BY THE GOVERNOR-GENERAL OF INDIA,
IN COUNCIL.

(Act No. XVIII of 1881 received the assent of the
Governor-General on the 8th June 1881, Act
No XVI of 1889 on the 29th October 1889
and Act XII of 1898 on the 21st
October 1898)

An Act to consolidate and amend the law relating to land revenue and the powers of Revenue Officers in the Central Provinces.

Whereas it is expedient to consolidate and amend the law relating to Land-revenue and to the powers of Revenue Officers in the Central Provinces; it is hereby enacted as follows:—

Note. The Land-revenue administration of the Central Provinces, as at this moment carried on, rests on an insufficient legal basis. Throughout a considerable portion of the country there is little or no law regarding the settlement and collection of the revenue beyond that which may be considered to be established by ancient usage. In some parts it is doubtful how far any written law applies, and elsewhere the only law is either the "spirit" of certain old Regulations of the Bengal Code, or half-forgotten rules which owe their binding force to the Indian Councils' Act. No inconvenience in practice was felt from this state of things in the earlier days of our rule, when the people scarcely realized the possibility of their having any rights as against their rulers; but of late years the diffusion of legal ideas has placed the land-holders and the Government more at arm's length; the old state of things has shown clear signs of giving way; and the want of a definite system of revenue law, such as exists in all the other settled Provinces of the empire, has come to be felt. To supply this want the present Bill has been prepared. It follows the main lines of the similar laws in force in the North-Western-Provinces and elsewhere, except that it is confined as closely as possible to the subject of the land-revenue administration, strictly so called, to the exclusion of certain subjects, such as partition and Courts of Wards, which it has been the practice in other Provinces to include in Land-revenue Acts. (Statement of objects and reasons)

PART—1.

CHAPTER—1.

PRELIMINARY.

Short title. 1. This Act may be called "The Central Provinces Land-revenue Act, 1881." It extends to all the territories for the time being under the administration of the

Local extent. Chief Commissioner of the Central Provinces;

Commencement.

and it shall come into force on such day as the Chief Commissioner, with the previous sanction of the Governor-General in Council, may direct by notification in the local official Gazette.

NOTE.

The Central Provinces Land Revenue Act came into force on the 4th November 1881 by the notification No. 4055 of the same date.

2. [Enactments repealed.] Repealed by Act XII of 1891.

3. [Pending proceedings.] Repealed by Act XII of 1891.

Interpretation-clause.

4. In this Act, unless there is something repugnant in the subject or context,—

(1) "Assistant Commissioner" includes also "Extra-Assistant Commissioner:"

(2) "Legal Practitioner" means an Advocate, Vakil or Attorney of any High Court, a Pleader, Mukhtar or Revenue agent:

(3) "Village-cess" means any cess which a person resident or holding lands in a village pays, or renders to the proprietors as such of the village, [or to their transferees or assignees as such or to the Patel], and includes service rendered or things furnished as well as money paid.

Note. All *Malik Makbuzas*, whether revenue free or assessed to revenue, are liable to pay cesses or additional rates. Under Act X of 1878 every estate is liable to the payment of additional rates, whether the land revenue has or has not been released (C. P. L. R. XIII Daryaosing vs. Seth Ghasiram).

(4) "Recognized agent" means a person authorized in writing by any party to a proceeding under this Act to make appearances, applications and to do other acts on his behalf in such proceeding, and also belonging to any class which the Chief Commissioner, may, from time to time, by notification in the Official Gazette, declare in this behalf:

NOTES.

Section 37 of the Code of Civil Procedure (Act XIV of 1882) lays down the following classes of recognized agents of parties by whom appearances, applications, and acts may be made or done:—

(*a*) Persons holding general powers of attorney from parties not resident within the local limits of the jurisdiction of the court within which limits the appearance, application or act is made or done, authorizing them to make and do such appearances, applications, and acts on behalf of such parties;

(*b*) Mukhtars duly certificated under any law for the time being in force, and holding special powers of attorney, authorizing them to do on behalf of their principals, such acts as may legally be done by Mukhtars.

(*c*) Persons carrying on trade or business for, and in the names of parties not resident within the local limits of the jurisdiction of the court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

But the above provisions do not apply to the territories now administered respectively by the Lietenant-Governor of the Punjab, and the Chief Commissioner of Oudh, and Central Provinces. In these territories the recognised agents of parties by whom such appearance, application and acts may be made and done shall be such persons as the Local Government may, from time to time, by notification in the official Gazette declare in this behalf.

Consequently, in exercise of the above power the Chief Commissioner of the Central Provinces, with the concurrence of the Judicial Commissioner, Central Provinces has framed the following rules on the subject:—

I. For parties residing within the local limits of the jurisdiction of the Court

(*a*) Persons holding special powers-of-attorney whom the Court may admit as fit persons to make or do such appearances, applications or acts.

II. For parties residing beyond the local limits of the jurisdiction of the Court.

(*a*) Persons of class [*a*] above.

(*b*) Persons holding general power-of-attorney carrying authority to make and do such appearances, applications and acts.

(*c*) Persons carrying on trade or business for or in the name of parties, provided no other person is known to be specially authorised to make or do such appearances, applications and acts.

2. As regards the " fitness " of persons claiming to appear as "Recognised Agents," it may be observed that there are some well known tests of *unfitness*. Amongst them is the servitude of uncertificated and unqualified Mukhtars, permanently taken into a trader's service *for the sole purposes of attending Court and conducting suits*. A person may also be unfit on account of educational deficiencies, or by reason of his special ignorance of the matter litigated. Again, in particular cases there *may* be special reason for determining a person to be unfit to represent a party. But seeing how simple is the character of the mass

of litigation in the Courts of these Provinces, a permanent servant or partner, or relation, or friend may ordinarily be allowed to act, on his filing a special power-of-attorney for record with the case.

3. The following instructions should also be noted:—

(*a*) Persons holding general powers-of-attorney are competent to give special powers on behalf of their principals, either to themselves or to third persons, to appear and act in any case. The third persons thus empowered must, however, be " fit " persons.

(*b*) Unnecessary trouble should not be given to principals. If there is no reason to doubt that the person presenting the power has received it, the Courts need not summon the principal or witnesses to attest the power. It is sufficient to see that the document has been duly signed and witnessed.

(*c*) One special power-of-attorney shall be sufficient to enable a person to appear and act in all the proceedings of a suit, including execution of decree, but not including an appeal in another Court,

(*d*) The special powers-of-attorney contemplated by these instructions are to be stamped under Article 50, Schedule I. of Act I. of 1879, and not under Article 10, Schedule II. of the Court Fees Act, 1870 which applies only to certificated Pleaders, Mukhtars, and Revenue Agents.

4. Care must be taken by the Courts that persons are not allowed to practise habitually and professionally as legal practitioners under colour of the Chief Commissioner's Notification which heads this Circular, and in contravention or evasion of Section 10, of the Legal Practitioners Act, 1879 (See Judicial Commissioner's Civil Circulars No. 1)

Service of process on recognised agents:—Processes served on recognised agent of a party to a suit or appeal shall be as effectual as if the same has been served on the party in person, unless the court otherwise directs." [Section 38 of the Code of Civil Procedure]. But a person holding a power-of-attorney, even if authorized by the power to appear and defend suits on behalf of his principal, is at liberty to refuse to accept service of summons, and appear in a suit brought against his principal, but may either act upon the power or not as he may think proper (I. L, R. 8 Calcutta, 317, in the matter of the petition of Lachmanchand).

Qualifications of a recognised agent:—When a person is duly empowered to represent his client in all courts, a court is bound to regard him as his client's recognised agent unless it thinks that he is an unfit person (C. P. L. R. IV 38 Srawan Kurmi vs. Mut: Rukhma). Want of education is no ground for refusing to admit a person as a recognised agent. The agent is not required to argue the case as a lawyer. His function is to appear for his principal and to do such acts as principal is authorized to do (C. P. L. R. IV 45).

(5) " agricultural year " means the year commencing on the first day of June, or on such other date as the Chief Commissioner may, in the case of any specified district or districts, from time to time appoint:

Note.—In Raipur and Bilaspur the Agricultural year commences on 1st April—Notification No. 2515, dated the 8th June 1886.

(6) * * * * * *

Note.—This clause, which was substituted for the original clause by section 5 of the Central Provinces Land Revenue Act XVI of 1889 has now been repealed by the C. P. Land Revenue Act XII of 1898.—

(6-*a*) " survey number " means a local area held by, or intended to be settled with, a ryot under a separate assessment of land-revenue in a village or estate which is the property of the Government:

(7) " mahal " means any local area held under a separate engagement for the payment of the land-revenue direct to Government, and includes also any local area declared, under the provisions of this Act, to be a mahal, [but does not include a survey number:]

(8) " village " includes any tract of land which, at the last settlement of such land, has been recognized as a village, or which the Chief Commissioner may, from time to time, declare to be a village for the purposes of this Act:

[8-*a*] " proprietor, " except in section 4, clause [6], and in sections 61, 62, 63 and 69, includes a gaontia of a Government village in the Sambalpur District:

Note—This clause has been inserted by the Central Provinces Land Revenue Act. 1889 (XVI of 1889).

The action of the Settlement authorities in conferring inferior proprietary rights was directed to giving the inferior proprietors as full proprietary power over the villages held by them as was secured to the Zamindars themselves over the rest of their estate, subject only to the payment to the Zamindar of a fixed annual sum. Thus the rights of the inferior proprietors extend over the forest and waste lands within their village boundaries, and the Zamindars have no rights to them [C. P. L. R. II 25 Daharaj Sing vs. Tribhowan Sing].

2. *Can a proprietor be his own tenant*:—A proprietor cannot be his own tenant. It is difficult to see, if regard be had to the definition of

the term 'tenant' in the Tenancy Act, how a proprietor can be his own tenant, for according to that definition tenant means "a person, who hold land of another person and is or but for a special contract would be, liable to pay rent for that land to that another person." There must thus be two persons and there must be a liability on the part of the one to pay rent to the other or else a special contract between them by which that liability is waived (C. P. L. R. VIII. 74 Dulichand vs. Seth Madan Mohan and Ramnath).A man cannot be his own tenant but there is nothing to prevent a co-sharer being a tenant of the proprietary body of which he is himself a member. Had the Defendants, been sole owners of the village then the tenant rights would no doubt have merged in the proprietary rights. In the present case, they owned a share which is quite distinct from the share of the other co-owners, and therefore a co-sharer who purchases an absolute occupancy holding must be deemed to become an absolute occupancy tenant (C. P. L. R. XIV P. 11 Jairam and Gopiram vs. Balaji, Mansaram and Jairam).

[9] "malguzar" means a person who, under the provisions of this Act, has accepted, or is to be deemed to have accepted, the assessment of a mahal, and includes his representatives and assigns, and also any person with whom a settlement has been made before this Act comes into force, and his representatives and assigns:

Note. In the absence of any special reservation, the Malguzar has the same rights over the burried bricks and stones that Gevernment would have had, if it had not settled the proprietary rights in the lands with him. Old bricks and stones forming part of a burried ruin do not appear to come within the description "mines, menerals and quarries" (C. P. L. R. VI 120 Tikaram Sao vs. Laldas Bairagi).

2. Notwithstanding any entry to that effect by the settlement authorities a Malguzar cannot be a Malik Makbuza of a plot of land situated within the mahal, and any person holding the plot from him

is a tenant, not a sub-tenant (C. P. L. R. XV 171 Shri Krishna Rao and others vs. Bagura and another).

[10] " malik-makbuza " means any person owning one or more plots of land separately assessed with revenue in a mahal, and who is not a malguzar, inferior proprietor or member of the proprietary body of the mahal;

Note. This clause was substituted for the original clause by Section 9 of the Central Provinces Land Revenue Act of 1889.

Creation of the Malik Makbuza right:—Malik Makbuza right is a creation of the Settlement and if the Settlement Officer gave that right to a certain person in respect of certain fields, a Civil Court cannot go behind the Settlement award and find that there was a mistake in the award and the right should have been conferred with respect to certain other fields (C. P. L. R. I. 146 Sheo Dyal Patel vs. Balaram).

Malguzar purchasing a Malik Makbuza plot:—A. Malguzar who purchases Malik Makbuza land is not a Malik Makbuza of that land after the purchase. The amended definition of the term seems to make it perfectly clear that a man cannot be at the same time a *Malguzar* and a Malik Makbuza (C. P. L. R. VI. 82 Wasudeo Bhasker vs. Sheoram and Raoji; C. P. L. R. VI. 107 Govind Rao Sadashiv Rao and Nilkant Rao vs. Bapu [deceased] sons Dhondia, Ishna and Sitaram).

2. Notwithstanding any entry to that effect by the Settlement authorities a Malguzar cannot be a Malik Makbuza of a plot of land situated within the Mahal, and any person holding the plot from him is a tenant and not a sub-tenant (C. P. L. R. XV. 171 Shrikrishna Rao and others vs. Bajura and another)

Malik Makbuza and Thekedar of a village:—The Plaintiff, who was a Malik Makbuza of certain fields and also the Thekedar of the village in which they were situate leased them to the Defendant. *Held* that he no more lost his Malik Makbuza rights in those fields than he would have lost any tenant right he might have had in fields prior to his taking the *theka.* His right to the Malik Makbuza fields was wholly distinct from his right as Thekedar (C. P. L. R. VIII. 61 Govind Raghunath vs. Sakharam *a.iás* Dubia).

Escheat of Malik Makbuza plot to Government:—In the case of a Malik Makbuza tenure lapsing, the Deputy Commissioner may make arrangements with some private individual for the lease of the holding during the period of the Settlement on such terms as they may agree on, or he may call on the Malguzar to take the land and pay on it any sum he may be willing, not falling short of the Government assessment made on it. This last tax Government can always demand, as the Malguzar has taken the village as a whole and accepted all responsibility for the full payment of the revenue assessed on it. At the termination of the Settlement, Government can do as it pleases with the plot, as the proprietary rights in it have been reserved to Government (R. B. C. I. 3 Para 2).

(11) "Lamberdar" means a person appointed in manner prescribed by this Act to represent the propreitary body of a Mahal in his relations with the Government.

Authority of Lamberdar:—1. In an undivided village the Lamberdar is the agent of the co-sharers for the management of the estate according to ordinary custom and his authority would not extend to the transfer of a perpetual interest in the land owned by the co-sharers. He could only provide for the cultivation of land by letting it to tenants in the customary manner, but his authority does not extend to the granting of a perpetual lease or even a lease for a long period. *Held* further, that where an agent exceeds his authority, then if the part of what he does which is within his authority can be separated from the part which is beyond his authority, so much only of what he does, as is within his authority, is binding as between him and his principal. Where the excess cannot be separated, then the principal is not bound by the transaction at all [C. P. L. R. II. 103 Daryao Sing and Mut: Uma vs. Makund Sing and Raghunath Sing].

2. A Lamberdar being the agent of the co-sharers for the management of a village, who grants leases and collects rents must be looked upon as the landlord whose consent under Section 61 (2) of the Tenancy Act is necessary to the validity of a transfer of property in respect of his holding by an ordinary tenant and when such consent is given by him to a mortgage it is not void as against the landlord (C. P. L. R. V. 47 Ramraton, Ramgopal, Sadaram and Chunnilal vs. Hira Laxman Dalip sing, Ramadhar and Harbox).

3. The Lamberdar of a village has authority to assent to the transfer of an absolute occupancy holding in consideration of the payment of a fine (C. P. L. R. VIII. 41 Sitaram Naryen vs. Arjun Kunbi Abhiman and Rajaram).

4. Ordinarily the Lamberdar as the agent of the co-sharers for the management of the village would be the person whose consent is necessary and sufficient. In the same way the Lamberdar acting on behalf of the proprietary body would be entitled to sue to set aside a voidable transaction. It is, however, competent to the co-owners of a village to make what arrangements they choose for its management. They are under no obligation to constitute the Lamberdar as their agent and he cannot claim to represent them as such (C. P. L. R. XIII. at Page 114 Gopal Ramkrishna and others vs. Govind Pandhurang Rangari).

Possession of a Lambardar:—1. The possession of a Lambardar who had to collect the profits, cannot be said to be adverse to the recorded co-sharers, merely because he paid them no share of the profits, nor can it be said that they were out of possession because they received no profits. In such a case the burden of proving that the Plaintiffs (co-sharers) were not barred by limitation does not lie on them [C. P. L. R. II. 171 Sheoba vs. Semaria, Raghu Rana and Jairam].

2. Where a recorded co-sharer in a village has given up all claim to his share in that village in cosideration of his holding exclusive possession of another village belonging to the family, the possession of the Lamberdar in the former village is not possession on behalf of that co-sharer. C. P. L. R. II. 171 Sheoba vs. Simaria:—*distinguished* (C. P. L. R. XI. 80 Dasroo, Neco and Kashi vs. Anant Ram and Dadoo).

3. The possession of one co-owner is ordinarily adverse to another co-owner who is excluded from possession. In the absence of proof that a lamberdar is in possession as agent of a co-sharer, such possession must be deemed to be adverse and not permissive. *Referred to*:—C. P. L. R, II. 171 C. P. L. R. XI. 30 [C. P. L. R. XIII. 99 Sheodyal Sing and others vs. Bhagirath Sing and Ruprai Sing]

Suit by and against Lamberdar:—1. A suit by a Lamberdar for recovery of additional rates is a suit of the kind mentioned in Article 37, Schedule II of Act IX of 1887 and not cognizable by the Court of Small Causes (C. P. L. R. III. 177. Rani Umed Kowar vs. Jawahir Lall Kayasth).

2. A co-sharer cannot sue the Lamberdar for his share of every item of income of village. He can only bring one suit for his share of the profits of the village for the year (C. P. L. R. V. 80. Pandu Patel Kalar vs. Pandu Patel More).

3. If the co-sharers in a Mahal agree to hold and cultivate certain lands and to pay to the Lamberdar a certain sum for their use and cultivation, a suit for the recovery of such money would lie (C. P. L. R. IX. 132. Raoji Patel vs. Kondba Patel).

4. In the absence of any agreement between the parties a suit by a Lamberdar against a co-sharer to recover compensation for the use and occupation of *sir* and *khudkast* land is not maintainable C. P. L. R. IX. 132. Raoji Patel vs. Kondba Patel *referred to*:—(C. P. L. XIII. 48. Lachman Ram vs. Munnalall and Raghunath).

5, A Lamberdar who has paid to the Government the whole of the revenue assessed upon a mahal can not recover from the assignee of a defaulting co-sharer (C. P. L. R. XI. 111. Balaji Sonar. vs. Govinda and Dhansingh).

Bhet Begar:—1 Before any gaontia can recover *Bhet Bigari* dues from the Lamberdar he must plead and prove that the services were commuted by the ryots for money payments and that such payments have been realized by the Lamberdar (C. P. L. R. XIV. 73. Kunjban gaontia vs. Shamsunder).

2. A Lamberdar who exacts *Bhet Begari* from all the ryots in the village is bound to account to the co-sharers for the value of the labour of which he has deprived them. Kunjban vs. Shamsunder C. P. L. R. XIV. 73. *Explained* [C. P. L. R. XV. 14. Chamra Panigrabi vs. Lakhan Panigrabi].

Managing Gaontia:—The post of Lamberdar or Managing Gaontia and the remuneration of that post are not alienable [C. P. L. R. III. 126. Bina Pujari Brahmin vs. Biragi Mohan Baboo].

(12) " Sub-Lamberdar " means a person so appointed to represent the inferior proprietary body of a mahal in its relations with the superior proprietors:

(13) " Mukaddam " means the executive headman of a village, appointed in manner prescribed by this Act:

(13-a) " Patel " means a person appointed in manner prescribed under this Act to represent a body of Government ryots in their dealings with the Government:

(13-b) " Patti " means the land allotted to any sharer or body of co-sharers in a mahal by an imperfect partition under this Act:

(14) " Tenant " means a person who holds land of another person and is, or but for a special contract would be, liable to pay rent for such land to such other person; but it does not include a farmer, mortgagee or thekadar of proprietary rights;

Explanation I.—An inferior proprietor is not, as such, a tenant;

Explanation II.—The holder of a survey number in a village let in farm by the Government, or held by a gaontia in the Sambalpur Disrtict, is a tenant of the farmer or gaontia for the time being;

Explanation III.—A person who is not an absolute occopancy-tenant or an occupancy-tenant and who holds land from a malik-makbuza or from the holder of a survey number is a sub-tenant of that land;

Note—1. Clauses [13-*a*] and [13-*b*] were inserted by the Central Provinces Land-Revenue Act, 1889 (XVI of 1889), Section 10.

2. These explanations were substituted for the original explanation by the Central Provinces Land-Revenue Act, 1889 [XVI 1889] Section 11.

(15) " rent " means whatever is paid, delivered or rendered, in money, kind or service, by a tenant on account of the use or occupation of land let to him.

Note—1 When a person sued for rent alleges that he has paid rent to a third party, such third party ought not to be made a party to the suit so as to convert a simple suit for arrears of rent into a suit for the determination of the title to the land in respect of which the rent is claimed. (XII. C. P. L. R. 1 Nagorao Jaideo Rao vs. Balaji Jageshware).

2. The rent payable by a protected Thekadar can only be enhanced either by agreement of parties or by an order of the Deputy Commissioner (C. P. L. R. XII. 39. Lachman Teli vs. Seth Dhanrupmal).

3. If the co-sharers in a mahal agree to hold and cultivate certain lands and to pay to the lambardar a certain sum for their use and cultivation, a suit for the recovery of such money would lie [C. P. L. R. IX. 132. Raoji Patel vs. Koudba Patel].

4. In a suit for rent in which the defendant sets up the title of a third party who is not joined in the suit there is no right of second appeal. (XIV. C. P. L. R. page 31. Hemraj Askaran vs. Kanhailal and Ratanchand Parwar).

5. A payment of rent in advance is in effect a loan to the landlord to be applied thereafter in discharge of the tenant's obligations to pay rent as it accrues due. (XIV. C. P. L. R. Page 65 Govind Rao vs Gopal Rao).

6 When the relationship of land-lord and tenant is admitted or is proved to exist the tenant is liable for payment of rent unless he can prove that he is exempt from such payment. Mere non-payment of rent for 12 years does not put an end to the tenancy (XV. C. P. L. R. 9 Tikaram Malguzar vs. Budhu aud Sadhu

7. If a tenant with the consent of the land-lord transfers by sale a portion of his holding that portion becomes a separate holding in the hands of the purchaser who is liable for a proportionate share of the entire rent (XV. C. P. L. R. 37 Piare Girdhari vs. Gopal Jhira).

8. The liability to pay rent due and in arrear follows the land and attaches to the person upon whom the right of occupancy devolves. But a daughter succeeding to the rights of her father after the death of her mother could not be held personally liable for arrears which had accrued due during her mother's life-time. The principal upon which rent should be apportioned, explained (XVI. C. P. L. R. 55 Mt: Janki Bai vs. Mt: Baya Bai)

(16) " absolute occupancy-tenant " means, in reference to any land, a tenant who, at a Settlement of such land made before this Act comes into force, or after such a settlement but before this Act comes into force, was recorded by order of a Revenue or Settlement Officer, in respect of such land, as an " absolute-occupancy ryot," or in terms equivalent thereto;

Note—The Act came into force on the 4th November 1881, see Central Provinces Gazette, 1881, Part II. page 176.

(17) " record-of-rights " includes the supplemantary administration-paper prepared at or after the time of making a Settlement before this Act comes into force.

Meaning of " sir-land "

4-A. (*1*) Subject to the provisions of sub-section (*2*), " sir-land " [that is to say, the demesne or permanent home-farm land of a proprietor] includes the following, and no other, land, namely:—

[*a*] land finally recorded under section 69 as " sir-land " in the papers of the current settlement;

[*b*] land declared, under Section 132, clause [*j*], to be " Sir-land;" and

[*c*] land in the Sambalpur District recorded

as "Bhogra" in the papers of the current settlement.

Note.—This Section has been inserted by Section 2 of the Central Provinces Land Revenue Act, 1898.

The following resolution recorded by the Chief Commissioner of the Central Provinces on the Central Provinces Land Revenue Act XVIII. of 1881 as amended by Act XII. 1898 and published by Notification No. 1651 of the 18th April 1899 will be read with interest:-

1. When proprietary rights were conferred on malguzars in the Central Provinces at the time of the thirty-year's settlement, all land which was in the cultivation of the newly-created proprietors, or which was recognized as appertaining to their home-farm, variously designated *sir* in the Hindi districts, *malik wahit* or *mukaddam wahit* in the Marathi districts, and *bhogra* in Sambalpur, was recorded as *sir* land in the record of rights. Over this land the proprietors had absolute control, no tenant could acquire rights in it, or could murmur if ejected by the proprietor.

2. The extent and proportion of the *sir* lands, or proprietary home-farm, as determined at the thirty-years' settlement, naturally differed very much from village to village, according to the length of tenure of the proprietor, his residence or non-residence in the village, his desire or disinclination to cultivate land himself; and the changes and chances in the *personnel* and means of the proprietary body, in the value of land, and in the relations of landlord and tenant, which the succeeding years brought about, soon disclosed the necessity for legislation.

3. Some proprietors were found to have habitually leased out extensive areas of *sir* land at rack-rents to tenants-at-will. Others again were complaining that the *sir* land was inadequate to their growing necessities, and had extended their cultivation over lands formerly held by tenants or broken up from waste. Accordingly, the

Land-revenue Act of 1881 and the Tenancy Act of 1883 conjointly provided for the extinction of *sir* rights in land when the proprietors had shown that they did not want to cultivate it themselves, and for the creation of these rights in favour of those proprietors who found it necessary to extend their home-fram areas. To secure these objects it was enacted that *sir* rights in land would be extinguished if the land was leased out for six or more consecutive years *without express reservation* of the *sir* right, and could be acquired by continuous cultivation by the proprietor for a term fixed at twelve years when the land had been relinquished by a tenant, and six years when the proprietor had himself broken it up from waste. The new law was not a success. Many proprietors who had let out their *sir* land without reservation (as was mostly the case with land let out before reservation was required by law), or who were ignorant of the new law requiring reservation, found themselves deprived altogether of proprietary home-farms of which they desired to resume cultivation. On the other hand, others were clever enough to perceive that by the expenditure of money in extended cultivation of land, they could in a few years' time acquire *sir* rights over large areas, thereby barring for all time the protection which the law otherwise conferred upon the ordinary tenants to whom the surplus *sir* area would afterwards be let. Ejectment of tenants was encouraged; the Civil Courts were constantly involved in deciding disputes as to whether *sir* rights had accrued or been extinguished at a time when village records were as yet of little value in checking the conflicting oral testimony produced; and landlords who desired to resist the claims of dispossessed tenants were furnished with a ready plea, the falsity of which the tenants were often too poor or too ignorant to successfully establish.

4. So apparent did these evils become that within six years after the passing of the Tenancy Act of 1883, the law was again altered by the amending Acts of 1889. Under this legislation *sir* rights existing at the passing of the Act could no longer be extinguished, and new *sir* rights could only be acquired automatically by cultivation for six years of waste land, or by the declaration of a Settlement Officer made at a settlement that land formerly held by a ryot had been continuously cultivated by a proprietor for upwards of twelve years. Only so much

of the land falling under the last category would be declared *sir*, the inclusion of which did not make the total *sir* land in a mahal exceed 25 per cent, of the total cultivated area of the mahal.

5. So far as the future effect of this new provision went, the amended law was simple enough; but the definition of *sir* land embodied in the Act was so seriously complicated by the necessity for saving and defining rights which had grown up in the interval between the original Acts and their amendment, that it has never been fully understood by the people, or even by many of the officers who have presided over the Revenue and Civil Courts of the Province. In order to mitigate the effect of the previous law extinguishing *sir*, it was provided that if land had lost its *sir* character by six years' non-occupation without reservation of *sir* rights, but at the date of the passing of the Act had come back again by lawful means into the occupation of the proprietor, the *sir* rights were revived. Similarly, as regards ryoti land over which by twelve years occupation *sir* rights had accrued, these rights were again forfeited if the land was not in the occupation of the proprietor when the amending Act came into force. In other words, while the provisions regarding the extinction of old, and the acquisition without limit of new rights in land, as they stood under the law of 1881-83, were allowed to hold good upto the date of the passing of the Acts of 1889, their operation in both cases was made conditional on the actual occupation of the land by the proprietor at the time that the amending Acts came into force, *i. e.*, the 29th October 1889. Only in respect of land broken up from waste was no change made in the law. These provisions were not definitely enunciated, but were to be inferred from the cumbrous definition in which they were wrapped up. The result was that the simplicity of the new law regarding *sir* was completely nullified by the saving clauses of the definition. It was still always possible for a landlord to raise the plea regarding any land in dispute, that it had become *sir* prior to 1889 under the saving clauses of the amending Act, and this although the Settlement Officer had carefully enquired into and rejected the plea. As years passed, and the difficulty of ascertaining the facts as they existed prior to 1889 increased, the disadvantage of this definition became more and more marked, and the opportunity afforded by the enactment of a

new Tenancy Act has been taken advantage of to again revise the law regarding *sir*.

6. Under the Act of 1898, *sir* land as defined in section 4-A (excluding the *bhogra* of Sambalpur, to which reference will presently be made, and subject to the exception noted in the following paragraph) consists of only two kinds:—

(i) Land finally recorded as *sir* at settlement;

(ii) Land declared *sir* by the Deputy Commissioner [section 132 (j)] during the currency of a settlement.

Under section 69 (1) of the Act, land which has been declared to be *sir* under either of the above provisions, " loses its character as *sir* land " when the proprietary right is parted with without the sanction provided for by section 45 (2) of the Tenancy Act of 1898; and if it is cultivated by the new proprietor, will be recorded, not as *sir*, but as *khudkasht*. This is apparently the only case in which such land finally and conclusively ceases to be *sir*. But there are two other cases in which the *sir* rights may remain, so far as their enjoyment goes, almost indefinitely in abeyance. The first is when a tenant whose holding includes *sir* land purchases a right of occupancy under section 73 of the Tenancy Act of 1898. The second is when a thekadar is made an occupancy tenant of *sir* land included in his lease by the Settlement Officer under the second proviso to section 65-A (1) of the Land-revenue Act. In both these cases, if at any time the occupancy right lapsed from failure of heirs or owing to the lawful ejectment of the tenant, the *sir* rights would apparently revive. The loss of the *sir* right, whether permanent or temporary, in all three cases, it will be observed, is due not to the use made of the land, but to a change in the legal status of the owner, tenant, or farmer.

7. As regards rights gained under the law as it stood in the interval between the Acts of 1883 and 1889, the Act of 1898 refers to

them only in respect of districts where there has been no settlement made since the passing of the amending Act of 1889. In districts resettled since 1889 all claims to *sir* land brought under this intermediate legislation have already been passed in review in the course of the settlement proceedings. When the claim could be substantiated, the land was declared *sir*, and thus falls under the definition of section 4-A sub-section (1); when the claim failed, the question is now finally closed. In districts not resettled since 1889, the alternative definition contained in sub-section (2) is still in force; but as each of these districts is in due course resettled, and the claims brought under it disposed of, that sub-section will cease to apply to it, until, in a few years' time, the sub-section will become obsolete, and the simple definition contained in sub-section (1) will stand alone. The only districts in which sub-section (2) of section 4-A is still in force are Chanda, Raipur, Bilaspur, Sambalpur, and Mandla. In the three former resettlement operations are now in progress, and in Sambalpur the sub-section in any case is only applicable to proprietary villages. This temporary definition is therefore even now of very limited application.

8. The remaining kind of *sir* to be considered is the *bhogra* land of Sambalpur. With the exception of the Zamindars and a few revenue free grantees who have been declared proprietors of their estates, the Malguzars, or gaontias (as they are locally termed) of the Sambalpur District are not proprietors of their villages, but only of their *bhogra* lands. The *bhogra* in Sambalpur, which is declared to be *sir* in clause (*c*) of sub-section (1), section 4-A, is therefore synonymous with proprietary land in the gaontiahi villages of that district. It cannot be increased or diminished. If the gaontia cultivates any waste land or land surrendered by a tenant, he takes it simply as a ryot, and becomes in respect of it a tenant, nominally of himself, but in reality (as is the case with all tenants in the gaontiahi villages) of Government. The *bhogra* of Sambalpur is the only kind of *sir* to which section 45 of the Tenancy Act does not apply [sub-section (3) of that section].

9. So much for the definition of *sir* land. The mode of deter-

mining it is described in section 69. The Settlement Officer first ascertains and records as *sir* [sub-section 1] the *sir* land of the previous settlement, and any additional land declared *sir* by the Deputy Commissioner during the currency of the settlement, less any land which has lost its *sir* charactor under section 45 of the Tenancy Act. So far he is merely ascertaining what land is already *sir* under the terms of the definition. He has next to consider under sub-section (2) what further lands are entitled to be declared and recorded as *sir* in the new settlement. Twelve years' continuous cultivation by a proprietor, extending up to the time of the inquiry, will qualify any land for record as *sir* [clause (*a*)], and six years will suffice if the land was broken up from waste by the proprietor [clause (*b*)]. Up to this point there has been no change in the law of 1889.

10. But, whereas the Act of 1889 proceeded to apply a limit [25 per cent, of the cultivated area] to the acquisition of *sir* rights in the case of land falling under clause (*a*), the Act of 1898 extends that limit to land falling under clause (*b*) also. At the same time, the test is altered; the decision will depend on the proportion borne by the *sir* land to the *occupied* not to the *cultivated*, area of the mahal, as the former Act provided.

11. While, however, extending this limitation to the acquisition of *sir* rights in waste, as described in clause (*b*), the Act contemplates cases in which particular mahals or parts of mahal may be exempted from the limitation in respect of this class of land. The Settlement Officer, and of course the Deputy Commissioner [who has, under section 132 (j), the power in respect of clause [*b*] land during the currency of a settlement] may suspend the limit with the sanction of the Commissioner. The Act is silent regarding the cases in which this exemption may be allowed, leaving this to the discretion of the officers mentioned; but the object of the provision is to allow for the expansion of the privileged home-farm in the case of villages owned by a large number of co-sharers who are themselves cultivators, and whose well-

being and security in their tenure requires the attention of Government as much as that of the ordinary ryots; and this is the only case to which it should be applied. The Deputy Commissioner who exercises this function [section 132 (j)] may declare land to be *sir* either on his own motion or on a reference by a Revenue Officer or Court; but, however the case may come to his notice, it will be his duty to satisfy himself, by independent inquiry if necessary, as to the facts of the case, and not to accept without careful scrutiny the statement that the land can properly be declared *sir*.

12. The new section 69 introduced by the amending Act has also brought about a change in jurisdiction. Hither-to, although some finality attached to the Settlement Officer's record of *sir* land, no finality at all attached to his decision that certain land was not *sir*. A claim thus rejected by him after careful local inquiry could be revived at any time in any suit before a Civil Court, after the evidence on which the Settlement Officer had acted was no longer available.

13. For the future, under the provisions of sub-section (4) to section 69, the decision of the Settlement Officer recording or omitting or refusing to record as *sir* any land which has previously been recorded as or declared to be such, will be final unless it is set aside by a Civil Court in a special suit brought under section 83 within one year of the settlement coming into force. This enables any error or omission on the part of the Settlement Officer to be put right by the Civil Court when the facts are recent. But the jurisdiction of the Civil Court under this section is limited to cases of *sir* land under sub-section (1), that is to say, to cases in which the Settlement Officer was dealing with land already declared by competent authority to be *sir* within the meaning of the definition in section 4-A.

14. With cases in which the Settlement Officer declares *sir* rights for the first time, the Civil Court will have nothing to do, and the appeal from the Settlement Officer's order will lie only to the Revenue Courts. In the future therefore the function of the Civil Courts will be confined to deciding whether *sir* land as declared by competent authority has been

included in the settlement record, or has been rightly excluded as having lost its character as *sir* land, and whether any land not so declared has been included by error in that record on the ground that it has been so declared; and [subject to the temporary exception in districts not resettled since 1889 of cases arising under the law as it stood prior to 1889] the Civil Court will never be called upon to decide whether any given land fulfils the conditions necessary for a first declaration that it is *sir*. That duty is reserved to Revenue Officers.

15. The finality of the *sir* record makes it the more necessary that Revenue Officers declaring or refusing to declare land to be *sir* should not act hastily or without careful inquiry. If this is always done, the change in jurisdiction which the new section entails will save much costly litigation between landlord and tenant without risk of injustice to either party. The distinction between the two cases noticed in the preceding paragraph also renders it essential that the Settlement Officer should record in each case the ground upon which land is recorded as *sir*.

Temporary provisions for districts not settled since 1889.

(2.) In any local area of which no settlement has been made since the commencement of the Central Provinces Land-revenue Act, 1889, and until the settlement of such local area next following the commencement of the Central Provinces Land-revenue Act, 1898, " sir-land " includes—

(*a*) land defined as sir-land in the foregoing sub-section:

Provided that any such land [other than bhogra] which, at the commencement of the Central Provinces Land-revenue Act, 1889, was unoccupied by such proprietor, and which had, after the date of the settlement last preceding the commencement of the said Act, been so unoccupied for a period of six consecutive years, shall not be deemed to be "sir-land;"

(*b*) land which at the commencement of the Central Provinces Land-revenue Act, 1889, was occupied by and had been cultivated by the proprietors or one of the proprietors thereof for a period of not less than twelve consecutive years;

(*c*) land which had at the commencement of the Central Provinces Land-revenue Act, 1889, been broken up from waste by the proprietor or one of the proprietors thereof, and cultivated by him for a period of not less than six consecutive years: Provided that any such land which at the commencement of the Central Provinces Land-revenue Act, 1889, was unoccupied by the proprietor, and had been so unoccupied by him for six consecutive years, shall not be deemed to be sir-land.

Explanation I.—For the purposes of sub-section (2), land shall be deemed to be occupied by the proprietor when it is leased out by him with an express reservation of his sir-rights, and land shall be deemed to be cultivated when it is allowed to lie fallow in accordance with the usual practice of cultivation.

Explanation II.—For the purposes of this section—

(*a*) the word " proprietor " shall be deemed to include an assignee of proprietary rights, but not a malik-makbuza:

(*b*) when by any local custom land is liable to exchange or redistribution among the cultivators thereof, land which is not " sir-land," and which is taken in exchange for " sir-land, " becomes " sir-land " and the " sir-land " given in exchange for that land ceases to be " sir-land: "

(*c*) Subject to the proviso to sub-section [*2*], clause [*a*], land which has been recorded as " sir-land " in the papers of any settlement made before the commencement of this Act shall be deemed to have been finally recorded as " sir-land " under Section 69.

Note 1. In order that Sir-land may lose its character such as und r the provision of Section 5 Act XVII of 1889, it is necessary that t should have remained unoccupied for six consecutive years before the C. P. Land-Revenue Act came into force. The law on the subject was deliberately changed by Act XVII of 1889 (C. P. L. R. VIII. 72 Nana Patel vs. Mulla and Shiva).

2. The six consecutive years referred to in section 3 (11) Explanation 1 of the C. P. Tenancy Act may be referred to any period between the date of the last preceding settlement and the coming in force of the C. P. Land Revenue Act 1889 (C. P. L. R. XI. 13 Saligram Sukal vs. Kanhiya and Kesho).

3. All ryoti land which by continuous proprietary cultivation had

become *sir* before the Tenancy Act was amended by Act XVII, of 1889 but which on the 29th October 1889 was unoccupied by the proprietor ceased to be *sir*. On the other hand land which had been cultivated by the proprietor for 12 consecutive years and which was on the above date in his occupation became *sir*-land, notwithstanding the fact that the *sir* rights which had previously accrued might have been temporarily extinguished by subsequent un-occupation for 6 consecutive years (C. P. L. R. XI. 20 Lala Ganesh Prasad vs. Mut: Narbadia)

4. See C. P. L. R. XI. 81–86 (Ganpat gaontia vs. Halsai Raut) in which the term " *last preceding settlement* " has been fully explained.

5. The mere recital by a tenant in a *Kabuliyat* that land is *sir* does not estop him from proving that the land was not *sir* when it was leased to him [C. P. L. R. XIV. 87 Narain Balkrishina Gurao vs, Yado Rao, Ganpat Rao].

6. Where *sir*-land has been distributed and is held in severalty each proprietor is the landlord of the land so held by him. If any proprietor sells his share and becomes occupancy tenant of the *sir*-land previously held by him in severalty he is the tenant of the purchaser and not the tenant of the entire proprietory body (C. P. L. R. XV. 143 Dhondha and Zengoba vs. Vishwanath and others).

PART.—II

CHAPTER.—II

OF REVENUE OFFICERS: THEIR POWERS AND PROCEDURE.

Chief Controlling Revenue authority.

5. The Chief Commissioner shall, subject to the control of the Governor-General in council, be the Chief controlling Revenue authority.

Revenue officers

6 [1]. Besides the Chief Commissioner, there shall be the following classes of Revenue Officers, namely:—

Commissioners;
Deputy Commissioners;
Assistant Commissioners;
Tahsildars;
Naib-Tahsildars;

[2]. All Revenue Officers are subordinate to the Chief Commissioner; all Revenue officers in a Division are subordinate to the Commissioner of the Division; and all Revenue Officers in a District are subordinate to the Deputy Cammissioner of the District.

[3] An officer in charge of a village survey in a District which is not under settlement may be invested by the Chief Commissioner with the powers of a Revenue Officer of any class, and, when so invested, shall be subordinate to such officer or officers as the Chief Commissioner may direct.

Note.—This section was substituted for the original Section 6 by the

Appointment, suspension and removal of Commissioners Deputy and Assistant Commissioners.

7. Subject to the control of the Governor General in Council, the Chief Commissioner shall appoint, and may suspend or remove, Commissioners, Deputy Commissioners and Assistant Commissioners.

Appointment, suspension and removal of Tahsildars and Naib-Tahsildars.

8. The Chief Commissioner shall appoint, and may suspend or remove, Tahsildars; and may also make rules for regulating the appointment, duties, suspension and removal of Naib-Tahsildars.

Persons holding office when Act comes into force.

9. All Commissioners, Deputy Commissioners, Assistant Commissioners, Tahsildars and Naib-Tahsildars holding office as such in the territories to which this Act extends when this Act comes into force shall be deemed to have been appointed hereunder.

Power to appoint additional Commissioners, Deputy Commissioners, and Tahsildars,

10. The Chief Commissioner may appoint any person to be an additional Tahsildar in any Tahsil, or, with the sanction of the Governor-General in Council, to be an additional Commissioner or additional Deputy Commissioner in any Division or District, and may suspend or remove any person so appointed, but subject, in the case of an additional Commissioner or additional Deputy Commissioner, to the like sanction.

The Chief Commissioner may invest any additional Commissioner, Deputy Commissioner or Tahsildar appointed under this section with all or any of the powers conferred by this Act on a Commissioner, Deputy Commiss ioner or Tahsildar as the case may be.

Chief Commissioner may invest Assistant Commissioner with powers of Deputy commissioner.

11. The Chief Commissioner may invest any Assistant Commissioner attached to a District with all or any of the powers conferred by this Act on Deputy Commissioners.

Officers transferred to retain powers with which they were invested.

12. Whenever any Assistant Commissioner, Tahsildar or Naib-Tahsildar is transferred from one District or tahsil to another, he shall, unless the Chief Commissioner otherwise directs, exercise in the District or tahsil to which he is transferred all the powers with which he was under any provision of this Act, invested by the Chief Commissioner in the District or Tahsil from which he is transferred.

Provision for discharge of duties of Deputy Commissioner dying or being disabled.

13. When a Deputy Commissioner dies or is disabled from performing his duties, such officer as the Chief Commissioner may by rule direct shall take executive charge of his district, and shall be deemed to be a Deputy Commissioner under this Act until a successor to the Deputy Commissioner so dying or disabled is appointed and such successor takes charge of his office, or until the person so disabled resumes charge of his office.

Chief Commissioner may alter limits of district or tahsil.

14. The Chief Commissioner may, from time to time, by Notification in the official Gazette, alter the limits of any district or tahsil, create new districts or tahsils and abolish existing districts or tahsils.

15. The Chief Commissioner may, subject to the

Power to invest Revenue-Officers—

control of the Governor-General in Council, invest any Revenue Officer with any of the following powers:—

with power conferred by Code of Civil procedure.

for the purpose of disposing of cases under this Act, any power conferred by the Code of Civil Procedure on a Civil Court;

with power to delegate powers.

power to delegate to any Revenue Officer subordinate to him the exercise of any power or performance of any duty conferred or impossed on him by this Act;

and, subject to the like control, may determine the Revenue Officer by whom any case or class of cases for which no express provision in this behalf is made in this Act shall be disposed of.

NOTE.—The Chief Commissioner has invested all Revenue Officers with the following powers for disposal of business:—

Notification No. 4032, dated 16th August 1884.

(1) The powers conferred by the Code of Civil Procedure in respect of the summoning and enforcing the attendance of parties and witnesses and compelling them to give evidence, of compelling the production of documents, of issuing commissions and of referring matters to arbitration. Such powers to be exercised by the same means and as far as possible in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure.

Notification No. 6051 dated 16th October 1888.

(2) The powers conferred on a Civil Court by sections 218 to 222 both inclusive of the Code of Civil Procedure regarding costs and the powers conferred on a Civil Court by the said Code for the execution decrees.

In the execution of any order of the nature of a decree including any order for the payment of costs Revenue

Officers shall, so far as may be, follow the procedure prescribed by the Code of Civil Procedure for the execution of a decree of the Civil Court.

Note ii—Careful discrimination should be exercised in awarding cost in cases under the Land-revenue Act. In cases of a contentious character, partaking of the nature of suits, as for instance, in disputed mutation and boundary cases, costs may be fitly awarded; but in cases which are merely undertaken in the administrative or fiscal interests of the Government, costs should not be levied or decreed, unless their levy is expressly provided for (as for instance) under section 112. Attention is invited to section 21 of the Act. Pleader's fees and charges connected with the employment of Pleaders or Mukhtars such as the costs of stamps on a Mukhtarnama or Vakalatnama or fees for writing out petitions should be very rarely included in the bill of costs.

Process fees should be included and charged at the rates prescribed by the Judicial Commissioner under section 20 of the Court-fees Act. Diet money and travelling expenses may be awarded. But care should be taken to keep the amount of costs decreed as low as possible.

Note iii—The Chief Commissioner has authorised Deputy Commissioners to delegate to Assistant Commissioners, who have passed the Departmental Examination in Revenue Law and Procedure by the Lower Standard, the exercise of the powers connected with the maintenance of the Register of Proprietary Mutations which are conferred by sections 125 and 127 of the Act (Notification No. 3668, dated the 28th June 1888), and to Tahsildars the powers conferred by the rules made under section 113, clause (*b*), of issuing processes for the arrest of defaulters or for the attachment or sale of their moveable property, provided that no defaulter shall be confined in the Civil Jail and no property be brought to sale without the pervious sanction of the Deputy Commissioner (Notification No. 3804, dated the 6th July 1888).

16. Subject to any rules which the Chief Commis-

Power of Deputy Commissioner to distribute work.

sioner may make in this behalf, a Deputy Commissioner may—

(*a*) refer any case to any Revenue Officer subordinate to him for investigation and report, or, if such Officer has power to dispose of such case, for disposal; or

(*b*) direct that any Revenue Officer subordinate to him shall, without such reference, deal with any case or class of cases arising within any specified area, and either investigate and report on such case or class, or, if he has power, dispose of it himself.

The subordinate Revenue Officer shall submit his report on any case referred to him under this Section for report to the Deputy Commissioner, or otherwise, as may be directed in the order of reference; and the Officer receiving such report may, if he has power to dispose of the case, dispose of the same, or may return it for further investigation to the officer submitting the report, or may hold such investigation himself.

Note.—Section 16 of the Land Revenue Act is controlled by Rule 30 of the Partition rules and no partition case can be made over for investigation and report to any Revenue Officer who has not been specially empowered in that behalf.

Semble—Any question of title or proprietary right such as is referred to in Section 136 G must be *inquired into and determined* by an officer who has been empowered to effect a partition. (C. P. L. R. XV. 153 Lokenath Dube vs. Bessesar Dube)

Power of superior Revenue authorities to withdraw and transfer cases.

17. The Chief Commissioner, the Commissioner or Deputy Commissioner may withdraw any case pending before any Revenue Officer subordinate to him, and either dispose of it himself, or refer it for disposal to any other Revenue Officer subordinate to him and having power to dispose of the same.

Power of Revenue Officers to enter on land. &c.

18. All Revenue Officers and persons acting under their orders may, in the performance of any duty under this Act, enter upon and survey land, and demarcate boundaries, and do all other acts necessary to the business in which they are engaged.

Power of Revenue and Settlement Officers to require attendance of persons and production of documents.

18 A. (1) Any Revenue Officer or class of Revenue Officers and any officer appointed to make a settlement may, if specially empowered in this behalf by the Chief Commissioner, order all persons whose presence may be, in the opinion of the officer making the order necessary for any of the purposes of this Act to attend either in person or by authorised agent at any specified time and place, and may also direct them to produce any written document in their possession, and all such persons shall be legally bound to obey the order.

(2) The power to require the attendance of parties in person shall, so far as may be, be subject to the provisions of section 176 of the Code of Civil Procedure.

Note—The Chief Commissioner has conferred the above powers on all Revenue Officers of the class of Assistant Commissioners or a class superior to this, and also on Settlement Officers [including Assistant Settlement Officers] in districts under settlement [Notification No. 1185, dated the 3rd March 1890).

Power to make rules to regulate procedure.

19. The Chief Commissioner may, with the previous sanction of the Governor-General in Council, make rules consistent with this Act for regulating the procedure of Revenue Officers in cases for which a procedure is not prescribed by this Act, and may, by any such rule, direct that any provisions of the Code of Civil Procedure shall apply, with or without modification, to all or any classes of cases before Revenue Officers.

Person by whom appearances and applications may be made before and to Revenue Officers.

20. All appearances before, applications to, and acts to be done before, any Revenue Officer under this Act may be made or done—

(a) by parties themselves; or

(b) with the permission of the Officer, by their recognized agents or any legal practitioner:

Obligation of parties to attend in person.

Provided that the employment of a legal practitioner or recognized agent shall not excuse the personal attendance of a party to any proceeding in cases where such attendance is required by any order of the Revenue Officer.

Legal practitioner's or agent's fees not allowed unless for special reasons.

21. The fees of a legal practitioner or recognized agent shall not be allowed as costs before any Revenue Officer unless such officer considers, for reasons to be recorded by him in writing, that such fees should be allowed.

Appeals.

22. An appeal shall lie against every decision or

order under this Act—

(*a*) when such decision or order is passed by any Revenue Officer subordinate to the Deputy Commissioner, except an Assistant Commissioner exercising the powers of a Deputy Commissioner—to the Deputy Commissioner;

(*b*) when such decision or order is passed by a Deputy Commissioner, or by an Assistant Commissioner exercising the powers of a Deputy Commissioner, whether in the first instance or on appeal—to the Commissioner of the Division;

(*c*) when such decision or order is passed on appeal or otherwise by the Commissioner of a Division—to the Chief Commissioner:

Provided that in no case shall a third appeal be allowed.

Limitation of appeals.

23. No appeal shall lie—

(*a*) in the Court of the Deputy Commissioner or an Assistant Commissioner exercising the powers of a Deputy Commissioner—after the expiration of thirty days from the date of the decision or order complained of; or

(*b*) in the Court of the Commissioner—after the expiration of sixty days from such date; or

(*c*) in the Court of the Chief Commissioner—after the expiration of ninety days from such date.

XV of 1877.

In computing such periods of limitation, and in all respects not herein specified, the provisions of the Indian Limitation Act, 1877, shall apply.

Powers of revision of Commissioner and Deputy Commissioner.

24. Any Commissioner or Deputy Commissioner may at any time, for the purpose of satisfying himself as to the legality or propriety of any order passed by and as to the regularity of the proceedings of, any Revenue Officer subordinate to him, call for and examine the record of any case pending before, or disposed of by, such officer, and may pass such order in reference thereto as he thinks fit:

Provided that he shall not under this section modify or reverse any order affecting any question of right between private persons, without having given to the parties interested reasonable notice to appear and be heard in support of such order.

Note—The following provisions of the Indian Limitation Act of 1877 which apply to the computation of the periods of limitation, referred to in this section, may be studied:—

Section 4:—Subject to the provisions contained in Sections 5 to 25 every suit instituted, appeal presented, and application made after the period of limitation prescribed therefor shall be dismissed, although limitation has not been set up as a defence.

Section 5:—If the period of limitation prescribed for any suit, appeal, or application expires on a day when the court is closed, the suit, appeal or application may be instituted, presented or made on the day that the court re-opens:

Any appeal or application for a review of Judgment may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the court that he had sufficient cause for not presenting the appeal or making the application within such period.

Section 12:—In computing the period of lmitation prescribed for any suit, appeal, or application, the day from which such period is to be reckoned shall be excluded. In computing the period of limitation prescribed for an appeal an application for leave to appeal as a pauper, and an application for a review of Judgment, the day on which the Judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence, or order appealed against or sought to be reviewed, shall be excluded.

Powers of revision of Chief Commissiner.

25. The Chief Commissioner may at any time call for and examine the record of any case pending before, or disposed of by, any Revenue Officer, and may pass such order in reference thereto as he thinks fit:

Provided that no order affecting any question of right between private persons shall be passed under this Section unless the Chief Commissioner has given the parties interested an opportunity of being heard.

Review of orders.

26. Every Revenune Officer may, either on his own motion or on the application of any party interested, reveiw, and on so reviewing modify, reverse or confirm, orders passed by himself or by any of his predecessors in Office:

Provided as follows:—

(1) when a Commissioner or Deputy Commissioner thinks it necessary to review any order which he has not himself passed, and when an Officer under the rank of a Deputy Commissioner proposes to review any order, whether passed by himself or by any predecessor, he shall first obtain the sanction of the Officer to whom he is immediately subordinate:

(2) No order shall be modified or reversed unless reasonable notice has been given to the parties interested to appear and be heard in support of such order:

(3) No order against which an appeal has been preferred shall be reviewed while such appeal is pending:

(4) No order affecting any question of right between private persons shall be reviewed except on the application of a party to the proceedings; and no application for the review of such an order shall be entertained

unless it is made within ninety days from the passing of the order, or unless the applicant satisfies the Revenue Officer that he had sufficient cause for not making the application within such period.

For the purposes of this section, the Deputy Commissioner shall be deemed to be the successor in office of any Revenue Officer who has left the district or has ceased to exercise powers as a Revenue-Officer, and to whom there is no successor in office.

PART.—III

OF SURVEY AND SETTLEMENT.

CHAPTER.—III

PRELIMINARY.

Notification of revenue-survey.

27. Whenever it appears to the Chief Commissioner that a revenue-survey should be made in any local area, he shall publish a notification in the official Gazette directing that such survey be made, and cause translations of such notification in the language of the district to be posted up in conspicuous places in such area; and thereupon all officers in charge of such survey

Effect thereof.

their assistants, servants, agents and workmen, may enter upon the lands to be surveyed, and erect survey marks, and do all other acts necessary for making the survey.

Note.—The following instruction on the verification and demarcation of village boundaries are to be found in C. P. Settlement Code (Para 1 to 5):—

1. On the issue of a Notification by the Chief Commissioner under Section 27 of the Land Revenue Act, directing that a Revenue Survey shall be made of any district or local area, the Deputy Commissioner will give notice in writing to the lambardars of all mahals, calling upon them (1) to point out the boundaries of villages to the patwaris and Revenue Inspectors; (2) to erect permanent marks of a prescribed kind at village tri-junctions and at all principal angles on village boundary lines or to repair permanent marks already existing; and (3) to erect temporary marks at all other angles, or at such intervals as may be prescribed, along village boundary lines. The points at which such permanent or temporary marks are to be erected or repaired will be those pointed out by the patwari or Revenue Inspector, subject to appeal to the Deputy Commissioner. The notice will further state that, if the required marks are not erected or repaired within a reasonable period (to be stated in the notice) their erection or repair will be effected by Government and the cost be recovered from the lambardars (Settlement Code Para 1)

Notification of Settlement.

28. When any local area is to be settled, the Chief Commissioner may, with the previous sanction of the Governor-General in Council, issue a notification of settlement, and in such notification shall—

(a) define the local area to be settled;

(b) specify the operations which are to be carried out in the settlement;

Power to amend notification.

and may, from time to time, with the like sanction amend, alter or cancel such notification.

Every such notification, amendment, alteration and cancellation shall be published in the local official Gazette.

Note.—A notification issued by the Chief Commissioner under Section 28 of the Land Revenue Act declaring a certain district to be under Settlement does not deprive the Civil Courts situate in that district of their jurisdiction to try suits under Section 57 sub-Section (2) of the Tenancy Act, whether or not incidentally there may arise in them a question regarding a matter which a Settlement Officer is required to decide or to enter in the record-of-rights. [C. P. L. R. X, 17 Manbodh vs. Asai].

Powers to appoint Settlement Officers;

29. The Chief Commissioner may, from time to time, appoint one or more Officers [hereinafter called Settlement Officers] to make the settlement of such area; and, when he appoints more than one such Officer, he shall appoint one of them [hereinafter called the Chief Settlement Officer] to control such settlement, and all other Officers appointed for the purposes of such settlement shall be subordinate to the Chief Settlement Officer.

and to suspend and remove them.

The Chief Commissioner may suspend or remove any officer appointed under this section.

Note.—Notwithstanding anything contained in Section 29, the Chief Commissioner shall be deemed to have, and to have had, authority to assign to the Settlement Officer the title " Assistant Settlement Officer," and to the Chief Settlement Officer the title of " Settlement Officer," (*See* the Central Provinces Law-revenue Act, 1889 (XVI. of 1889) Section 40), Settlement-Officer may be invested with powers of Deputy Commissioner.

30. During the progress of the settlement of any local area, the Chief Commissioner may invest any Settlement Officer within such area with all or any of the powers of a Deputy Commissioner under this Act to be exercised by him in such classes of cases as the Chief Commissioner may, from time to time direct.

Certain provisions of chapter II applied to Settlement-Officers.

31. The provisions of section 11 and sections 15 to 26, both inclusive shall apply, *mutatis mutandis*, to Settlement Officers and to proceedings before them, the expression " Settlement-Officer " being read for the expressions " Assistant Commissioner " and " Revenue-Officer, " and the expression " Chief Settlement-Officer " for the expression " Deputy Commissioner, " wherever those expressions occur:

Provided that an appeal from any appealable order passed by a subordinate Settlement-Officer shall lie to the Chief Settlement-Officer if preferred within sixty days from the date of such order:

Provided also that no appeal shall lie from any decision of a Chief Settlement-Officer which can be called in question in a Civil Court.

Appointment of Settlement Commissioner;

32. The Chief Commissioner may, from time time, with the previous sanction of the Governor-General in Council,—

(a) Appoint a Settlement-Commissioner, and transfer to him, within any local area under settlement, all or any of the powers which the Commissioner of the Division, if the land to be settled were wholly situate within such Division, would otherwise exercise under this Act in matters connected with such settlement; and

Delegation to him of Chief Commissioner's powers.

(*b*) delegate to the Settlement Commissioner such of his own powers in regard to matters connected with such settlement as he thinks fit,

Powers to invest Settlement Officers with Civil Court powers.

XVI of 1885.

33. When any local area is under settlement, the Chief Commissioner may invest any subordinate Settlement Officer with the powers of any of [the last five classes] of Courts described in Section 4 of [the Central Provinces Civil Courts Act, 1885] and the Chief Settlement Officer with the powers of a Court of a Deputy Commissioner described in the same Act, (Section 7) for the trail, in the first instance, of any of the following classes of suits instituted within such area [namely]:—

(*a*) Suits for arrears of rent due on account of any right of pasturage, forest rights, fisheries or the like;

(*b*) Suits by Lambardars for arears of revenue payable through them by the proprietors whom they represent;

(*c*) suits by proprietors for their share of the profits of an estate or any part thereof after payment of the revenue and village expenses, or for a settlement of account;

[*d*] suits by muafidars or assignees of revenue for arrears of revenue owing to them as such muafidars or assignees;

[*e*] suits by superior proprietors for arrears of revenue due to them as such superior proprietors;

[*f*] suits by proprietors and others in receipt of the rent of land against any agents employed by them in the management of land or collection of rents, or against the sureties of such agents, for money received or accounts kept by such agents in the course of such employment, or for papers in their possession;

[*g*] suits regarding any matter which a Settlement Officers required to decide or to enter in the record-of-rights, and of which Civil Courts can take cognizance;

[*h*] suits relating to land, or the rent, profits or occupation of land.

Chief Settlement Officer to have powers of Deputy Commissioner.

34. When the Chief Commissioner invests any subordinate Settlement Officer with the powers of a Civil Courts for the trial of any of the suits mentioned in section 33, the Chief Settlement Officer to whom

such Settlement Officer is subordinate shall have the powers of the Court of a Deputy Commissioner described in [the Central Provinces Civil Courts Act, 1885 Section 16 and Section 17, sub-section (1) and the powers of a Court of a Commissioner described in the same Act, Section 15, sub-section (1)] with reference to proceedings before, or decrees and orders of, such Settlement Officer in such suits.

Appeals in suits specified in Section 33 when to lie to Chief Settlement Officer.

35. When any local area is under Settlment and Settlement Officers have been invested with the powers mentioned in section 33 in such local area, the Chief Commissioner may, with respect to all or to any of the suits specified in that section, declare that all or any of the decrees and orders passed in excercise of the powers of Courts [of the last four classes] aforesaid, by Assistant Commissioners or Tahsildars not being Settlement Officers, shall be appealable to the Chief Settlement Officer, and not to the Depty Commissioner of the district.

Division of Civil work between Settlement Officers and ordinary Courts.

36. When any local area is under settlement and the Settlement Officer therein have been invested with powers under section 33, the Chief Commissioner may withdraw from the jurisdiction of the ordinary Civil Courts within such area the classes of suits which Settlement Officers have power to dispose of under the section, or he may direct that in respect of such suits, the Settlement Officers shall have concurrent jurisdiction with the ordinary Civil Courts:

Provided that no proceedings which have been inadvertently or erroneously taken before the Civil Court shall be deemed to invalid merely on the ground that, by the Chief Commissioner's order, they should have been taken before a Settlement Officer.

Note—The jurisdiction of the Civil Courts is barred by clause (a) of Section 152 of the Land-Revenue Act in matters in dispute between the parties enquired into and disposed by a Settlement Officer under the provisions of Section 65 (a) of the same Act.

The provisions of the proviso of Section 36 of the Land Revenue Act clearly apply only to suits which have been withdrawn by the Chief Commissioner from the cognizance of the Civil Court during the pendency of a Settlement (See also 10. C. P. L. R. 17 under Section 28 and 35)

Provisions of Section 31 not to apply to certain suits.

37. Nothing in section 31 shall apply to suits and appeals or other proceedings instituted before, or determined by, Settlement Officers in pursuance of powers conferred upon them under section 33, 34 or 35.

Appeal, reference and revision.

38. Except as provided in section 33, 34 and 35, the decrees and orders of a Settlement Officer passed whether in the first instance or on appeal, in excercise of the powers of a Civil Court of any grade, shall, for the purposes of appeal, reference and revision, be deemed, to be decrees and orders of a Civil Court of such grade, and no appeal shall lie under the provisions of section 22 from such decrees or orders.

Duration of Settlement operations.

39. Every settlement notified under section 28 shall be deemed to be in progress until the Chief Commissioner, by notification in the Official Gazette,

declares that it is completed.

Cases pending at close of settlement operations.

When the Settlement of any local area has been notified as completed, all the powers exercised by the Settlement Officers in such area shall cease, and all suits and applications pending before such Officers shall be transferred to such of the Courts ordinarily having jurisdiction in such cases as the Commissioner of the division directs, or, if there are no such Courts, shall be disposed of in such manner as the Chief Commissioner directs.

CHAPTER.—IV.

OF DEMARCATION.

Unowned Lands.

Settlement Officer to invite claims to lands appearing to have no owner.

40. When any local area is under settlement, the Settlement Officer shall make lists of all lands in such area which appear to him to have no lawful owner, and shall thereupon issue a notification declaring his intention to demarcate such lands as the property of the Government and inviting every person having claims to or over them to present in his Court, within three months from the date of the notification, a petition in writing setting forth such claims and the respective grounds thereof.

Application of Act XXIII of 1863.

41. Every such notification shall be deemed to be an advertisement under Act No. XXIII of 1863 [*to provide for the adjudication of claims to waste lands*],

section 1;

the demarcation of such lands shall be deemed to be a disposition of them within the meaning of that Act;

the Settlement Officer shall exercise all the powers vested in the Collector by that Act; and

claims to or over the land comprised in such notification shall be dealt with as nearly as may be in the manner prescribed in that Act.

Procedure when limited right over land established.

42. Whenever a claim to the exercise or enjoyment of any right [not amounting to the right of exclusive possession] in, to or over any land comprised in such notification is established, either before the Settlement Officer or before the Court constituted under the said Act No. XXIII of 1863 section 7, the Settlement Officer may assign to the claimant as his property a definite portion of such land, or, with the sanction of the Chief Commissioner, he may otherwise compensate the claimant; and such assignment or compensation shall be held to extinguish all claims on account of such exercise or enjoyment.

Mahals.

Power to form mahals.

43. The Settlement Officer may declare any local area to be a mahal.

Excluded lands

Settlement officer may exclude any town or land from settlement operations.

44. For the purpose of excluding from all or any of the operations of the settlement any town or any land from which the owner can derive no profit, the

Settlement Officer may mark off the site and determine the limits of such town or land:

Provided that no land in respect of which land revenue is payable at the date of the notification issued under section 28 shall, under this section, be exempted from assessment without the sanction of the Chief Commissioner.

Boundary-marks.

Erection of new and repair of existing boundary marks.

45. When any local area is under Settlement, the Settlement Officer may order all persons who have proprietary rights in the land comprised in such area (or who are in possession of the whole or any part of the land as gaontias or as thekadars of Government land, or as ryots who have accepted the assessment of a survey-number) to erect boundary-marks of such description and at such places as he thinks necessary in order to define the limits of the mahals, fields or other lands in their possession, or to repair boundary marks already existing, and may fix a reasonable time for obeying his order;

and, if his order is not obeyed within such time, may cause such marks to be erected or repaired under his own orders, and may recover the cost of such erection or repair from the persons against whom his order was made, in such proportion as he thinks fit.

CHAPTER—V.

OF THE ASSESSMENT OF LAND-REVENUE.

Separate sum to be assessed on every mahal. Progressive assessments.

46. On every mahal a definite and separate sum shall be assessed as land-revenue; but the sum so assessed may be reduced in such manner and to such extent as the Chief Commissioner thinks fit, for any period not exceeding ten years from the date on which the assessment takes effect.

Provided that the Chief Commissioner may declare that any mahal which consists wholly or principally of forest is a forest mahal, and may direct that the assessment shall be a specified share of the gross or net annual value of the produce of the mahal to be determined from time to time for each year, or part of a year, or that the assessment shall be in the form of rates chargeable on the produce of the mahal in each year or part of a year.

Matters as to which Chief Commissioner is to instruct Settlement Officer.

47. The Chief Commissioner may, from time to time, with the previous sanction of the Governor-General in Council, give instructions to the Settlement Officer as to the principle on which land revenue is to be assessed, and as to the sources of miscellaneous income to be taken into account in the assessment.

What land taken into account in mahal assessing,

48. In assessing a mahal all land situate therein shall be taken into account except the following [that is to say]:—

(*a*) land purchased free from revenue under any rules for the time being in force to regulate the sale of waste lands;

(*b*) land in respect of which the revenue has been redeemed under any rules for the time being in force;

(*c*) land excluded from assessment under section 44;

(*d*) land in respect of which a claim to hold it free from revenue as against the Government is established under the provisions hereinafter contained;

(*e*) land which the Chief Commissioner, subject to the control of the Governor-General in Council, may from time to time exempt from assessment.

Assessment to whom to be offered.

49. The assessment of every mahal shall be offered to the entire proprietary body of such mahal.

Provided that, when superior and inferior proprietary rights co-exist in the same mahal, the Settlement Officer may, subject to such rules as the Chief Commissioner may make in this behalf, determine whether the assessment shall be offered to the superior or to the inferior proprietors.

Subject to such rules as the Chief Commissioner may make in this behalf, the Settlement Officer may determine the manner and proportion in which the proprietary profits of the mahal shall be allotted between the superior and the inferior proprietors.

When a proprietor has mortgaged his rights in any mahal, and the mortgagee has entered into possession, such mortgagee, so long as he is in possession, shall, for the purposes of this section, stand in the place of the mortgagor.

Note.—Remission of land revenue by Government does not affect the respective rights and liabilities of Superior and Inferior Proprietors (Rao Raghunath Rao vs. Baboo Telanga Naidu, XI C. P. L. R. 106.)

Sub-settlement to be made with inferior proprietors when settlement is made with superior.

50. When in a mahal in which superior and inferior proprietors co-exist the Settlement Officer makes a settlement with the superior proprietors, he shall make on their behalf a sub-settlement with the inferior proprietors, by which such inferior proprietors shall be bound to pay to the superior proprietors an annual revenue equal to the land-revenue with which the mahal is assessed and to the profits to which the superior proprietors are entitled under section 49.

Note.—1. The action of the Settlement authorities in conferring inferior proprietary rights was directed to giving the inferior proprietors as full proprietary power over the villages held by them as was secured to the Zamindars themselves over the rest of their estate, subject only to the payment to the Zamindar of a fixed annual sum. Thus the rights of the inferior proprietors extend over the forest and waste land within their village boundaries; and the Zamindars have no right to them. (Dahraj Singh vs. Tribhuvan Singh C. P. L. R. II. 25.)

2. In a suit by a superior proprietor against an inferior proprietor to recover money due under a sub-settlement the plaintiff may either ask for a personal decree, or may enforce his charge upon the land

or may pursue both remedies at once. (Seth Kanakmal vs. Sheo Prashad and others C. P. L. R. XIII. 111.)

3. A thekadar holding from an inferior proprietor is not *as such* liable to the superior proprietor for the revenue referred to in section 50 of the Central Provinces Land Revenue Act, 1881 (Dhiwaroo Patel vs. Dajiba Bhaoo C. P. L. R. XIV. 81.)

4. In the absence of a general or special order by a Revenue Officer under sub-section (6) of section 18 of the Tenancy Act, an inferior proprietor is not relieved from payment of *malikana* (Raja Seth Gokaldas and Rai Bhadur Ballabhdas vs. Baber Patel etc. C. P. L. R. XIV. 132)

5. In the absence of a general or special order by a Revenue Officer under sub-section (6) of section 18 of the Tenancy Act, a Thekadar is not relieved from payment of theka-Jama merely by reason of the fact that by an order passed under sub-section (1) certain rents have been remitted or suspended. The liability or non-liability for the payment of theka-Jama under such circumstances depends entirely upon the intention of the parties at the time of making the contract (Raja Kishore Singh vs. Seth Jethmal Mahasri C. P. L. R. XIV. 138

6. The defendant, an inferior proprietor, paid malikana to the plaintiff, a superior proprietor, on account of the year 1309 Fasli. By order of a Revenue Officer passed subsequently payment of malikana was remitted on account of the year in question.

In a suit by the plaintiff to recover arrears due on account of subsequent years it was held that the defendant might claim to set off the excess payment made by him on account of the year 1309 (Raghunath Mahadeo Doye vs. Dajiba Bhau C. P. L. R. XVI. 189)

7. The Land Revenue Act, 1881, does not empower a Settlement Officer to confer inferior proprietary rights. His power to fix the *Jama* payable by a *thekadar* of proprietary rights is limited to the

case where he is requested to do so by the proprietor and the *thekadar* has been declared to be "protected." Sections 50, 51 and 65-A of the Act referred to [N. L. R. 71 Tulsiram Bapu vs. Dajiba and others.]

Power to give directions as to payment of certain profits of superior proprietors.

51. When in any such mahal the settlement is made with the inferior proprietors, the Settlement Officer may direct that the profits to which the superior proprietors are entitled under section 49 shall be paid by the inferior proprietors direct to such superior proprietors, or that such profits shall be collected as if they were land-revenue, and shall be paid to the superior proprietors from the Government treasury.

Power to make rules for reporting assessment for sanction.

52. The Chief Commissioner may make rules prescribing the manner in which the Settlement Officer shall report for sanction his rates and method of assessment; and no assessment shall be offered without the previous sanction of the Chief Commissioner.

Offers of assessment to be made subject to revision and confirmation.

53. In making any offer of assessment the Settlement Officer shall state that it is made subject to confirmation by the Governor-General in Council and also to revision by the Chief Commissioner at any time before such confirmation is received.

Option to accept or refuse assessment.

54. It shall be in the option of the persons to whom an assessment is offered to accept or refuse the same.

Mode of acceptance.

If they are willing to accept it, they shall make and sign an acceptance in writing, in such form as the

Chief Commissioner may, from time to time, prescribe in this behalf, and deliver the same to the Settlement Officer.

Proprietor not accepting in manner prescribed may be deemed to have accepted.

55. Any proprietor who, within such reasonable period as may be specified by the Chief Commissioner, fails to make, sign and deliver such acceptance, or to inform the Settlement Officer that he refuses the proposed assessment, shall, if the Settlement Officer by an order in writing so directs, be deemed to have accepted such assessment.

Effect of acceptance of assessment.

56. Whenever the assessment of a mahal has been accepted under this Act, the persons who have accepted it shall be bound to pay the amount thereof from such date and for such term as the Chief Commissioner may appoint in this behalf, or, if at the expiry of that term no new assessment has been made and is ready to take effect, until a new assessment has been made and is ready to take effect :

Provided as follows:—

Assessment may be rescinded by Chief Commissioner;

1st,—any assessment may be rescinded by the Chief Commissioner at any time before it has been confirmed by the Governor-General in Council;

or by Governor-General in Council.

2ndly,—the Governor-General in Council may rescind any assessment submitted to him for confirmation;

Malguzars may object to continuance of assessment beyond term of settlement.

3rdly,—if all the malguzars of a mahal, six months before the expiry of the term fixed under this section, apply in writing to the Deputy Commissioner stating that they are unwilling that the assessment should continue in force beyond the expiry of such time, the assessment shall, on the expiry of such term, cease to be in force.

When assessment is in form of rates, Deputy Commissioner to publish record of amount payable.

56-A. (1) If the assessment accepted is a specified share of the produce of a forest-mahal to be determined from time to time or in the form of rates chargeable on the produce of a forest-mahal, the Deputy Commissioner shall, from time to time, as the condition of the assessment may require, notify to the malguzar, on or before such date, or at such intervals as the Chief Commissioner may prescribe, the amount payable in respect of the forest-mahal.

(2) The Deputy Commissioner and his subordinates may at any time enter on the forest-mahal and do all acts necessary for ascertaining the amount payable in respect thereof.

Procedure when assessment is refused.

57. Where there is but one class of proprietors in a mahal, and all refuse to accept in manner required by section 54 the assessment offered, the Settlement Officer may, with the previous sanction of the Chief Commissioner, exclude them from setttlement for a period not exceeding thirty years from the date of such exclusion, and may either let the mahal in farm, or

take it under direct management.

Procedure when only some proprietors accept assessment.

58. If some of the proprietors consent, and some refuse, so to accept the assessment offered, the Settlement Officer may, with the previous sanction of the Chief Commissioner, if the interest of the recusant proprietors in the lands taken into account in the assessment consists entirely of lands held by them separately from the other proprietors, exclude such recusant proprietors from settlement for a period not exceeding thirty years from the date of such exclusion, and either let their lands in farm or take such lands under direct management.

In other cases the assessment of the entire mahal shall be offered to the proprietors who consented to aceept the assessment when originally offered, and if they refuse it the mahal shall be dealt with under the provisions of section 57.

When the recusant proprietors are excluded under this section, the lands of the proprietors who consented to accept the assessment originally offered shall be deemed to be a separate mahal, and shall be assessed as such; and such assessment shall be offered to the proprietors so consenting; and, if the lands of the recusant proprietors are let in farm, the farm shall be first offered to the proprietors who consented to accept the assessment originally offered.

Procedure on refusal of assessment in village in which superior and inferior rights co-exist.

59. When an assessment is offered in a mahal in which both superior and inferior proprietors co-exist,—

(*a*) if all the proprietors of the class with which the Settlement Officer proposes to make the settlement refuse to accept as aforesaid the assessment offered, the assessment shall be offered to the proprietors of the other class; and, if all such proprietors refuse the assessment, the Settlement Officer shall proceed as provided in section 57;

(*b*) if some only of the proprietors of the class with which the Settlement Officer propose to make the settlement refuse the assessment, he may either proceed as if all had refused it, or may deal with the mahal under section 58 :

Provided that, if, in the case contemplated by clause (*b*), the proprietors who consented to accept the assessment when originally offered refuse to accept it, such assessment shall be offered to the other class of proprietors.

Procedure on refusal of assessment by inferior proprietors

60. If all or any of the inferior proprietors refuse any assessment offered under section fifty, the Settlement Officer may exclude them all from the sub-settlement, and assign the proprietary management and profits of the mahal to the superior proprietor for any term not exceeding the term of settlement.

Allowance to excluded proprietors.

61. Any proprietor excluded from settlement under section 57 or section 59, clause [a] shall be entitled to receive from the Government an annual allowance, the amount of which shall be fixed by the Chief Commissioner, but which shall not be less than five percent, or more than ten per cent, on the amount of the assessement offered to him by the Settlement Officer.

Excluded proprietors to have occupancy rights in their sir-land.

62. Any proprietor excluded from settlement or sub-settlement under sections 57 to 60 both inclusive, shall be entitled to retain possession of his sir land [if any] as if he were an absolute occupancy-tenant, and the rent to be paid by him for such land during the term of his exclusion shall be fixed by the Settlement Officer accordingly.

Aggregate amount of allowance granted to, and deduction from rent allowed to, excluded proprietor.

63. The aggregate amount of any allowance under section 61 and of the difference between the rent fixed under section 62 and the rent which the excluded proprietor would be liable to pay if he were a tenant-at-will, shall not be less than five or more than fifteen per cent on the amount of the assessment offered to him by the Settlement Officer.

Sub-settlement with malik-makbuzas and other like holders of land.

64. The Settlement Officer may make, on behalf of malik-mukbuzas or other like holders of land, such a sub-settlement as shall secure to them from the malguzars of the mahal their existing rights; and may provide that, in addition to the land-revenue payable by them, they shall pay to the malguzars such percen-

tage thereon, not exceeding twenty per cent, as may, in his opinion, be sufficient to compensate the said malguzars for their responsibility in respect of the land-revenue, and to provide for the fees of lambardars and mukaddams.

Revenue payable under sub-settlement to be first charge on land.

65. The amount of revenue payable under a sub-settlement shall be a first charge upon all the land comprised in such sub-settlement.

Note.—Under Section 65 Land Revenue Act, the Malguzar through whom the revenue due on a Malik Makbuza holding is paid has first charge on the land, if he likes, for that revenue. He may sell the land free from all incumbrances or he may not. Or he might under Section 116 ask the Deputy Commissioner to realize the arrears for him, and if the Deputy Commissioner sold the land, it would like other land sold for arrears of revenue, be sold free of incumbrances. (Kheta Jat vs. Sukh Deo Seth C. P. L. R. I. 127.)

A superior proprietor who holds decrees against the inferior proprietor on account of revenue payable under a sub-settlement has a charge, within the meaning of section 91 of the Transfer of Property Act, upon all the land comprised in such sub-settlement. (Seth Ratan Lal vs. Rani Umed Kuar C. P. L. R. XI. 95.)

A suit to enforce the charge referred to in section 65 of the Land Revenue Act is governed by the special rule of limitation contained in section 118 of the Act. (Khemchand and others vs. Dhanraj Kirar C. P. L. R. XVI. 52.)

Power to inquire in to the claims of thekadars, gaontias and farmers.

65-A. (1) The Settlement Officer may inquire into the claim of any person holding from a proprietor a village or part of a village as thekadar, gaontia or farmer, and may, notwithstanding any contract to the

contrary and with the previous sanction of the Chief Commissioner, declare such thekadar, gaontia or farmer to be "protected" for the purposes of this section:

Provided that no thekadar, gaontia or farmer shall be declared to be protected under this section, unless he or those from whom he has inherited has or have been in possession of the village or part of the village for a period of not less than twenty years, or unless it is proved to the satisfaction of the Settlement Officer that he or those from whom he has inherited has or have established the village or substantially improved it at his or their own cost:

Provided also that, when a thekadár, farmer or gaontia is entitled to claim protection within the meaning of this section, the Settlement Officer may, in his discretion and with the previous sanction of the Chief Commissioner, instead of declaring him to be protected, confer on him the rights of an occupancy-tenant in respect of the whole or part of any land which he may be cultivating, whether as sir land or otherwise, at the time of the inquiry, and shall determine the rent payable by him as occupancy tenant of such land.

(2) When a thekadár, farmer or gaontia is declared to be protected under this section, the Settlement Officer may, at the request of the proprietor of the village, determine the amount of the theka-jama which shall be payable by such thekadár, gaontia or farmer to the proprietor of the village on and from the date on which the settlement of

the village takes effect.

(3) Any person who, having held any village or part of a village as thekadár, farmer or gaontia, was ejected by the proprietor from, or lost possession otherwise than by transfer or voluntary surrender of, such village or part of a village, and who had at the date of such ejectment or dispossession earned a claim to be protected, may at any time before the expiration of two years from the date of such ejectment or dispossession apply to the Settlement Officer to reinstate him in the possession of the village or part of the village from which he was ejected; and the Settlement Officer may, with the previous sanction of the Chief Commissioner, replace him in the possession of such village or part of a village and declare him to be protected, or may confer upon him the rights of an occupancy-tenant in the whole or part of any land in the village which he was cultivating at the time of his ejectment, and place him in possession of such land and determine the rent which shall be payable by him to the proprietor as such tenant.

Explanation.—Any such person as is described in this sub-section who, having been ejected subsequently to the first day of January 1893, applied to a Revenue Officer for reinstatement within two years of his ejectment, shall be deemed to have made the application required by this sub-section.

(4) The incidents of the tenure of a thekadar [including a farmer or gaontia] who has been declared to be protected under this section shall be as follows:—

(*a*) The tenure shall be heritable, but not transferable by sale, gift, mortgage or dower; it shall not be saleable in execution of any decree, nor shall any decree be passed for the sale thereof; and, save in so far as any arrangements to the contrary are in force at the time of the declaration, it shall not be partitioned and shall devolve on one member only of the thekadar's family;

(*b*) when on the death of a thekadar there are two or more heirs bearing the same relationship to him, the eldest of such heirs shall succeed:

Provided, first, that of such heirs an heir who was joint with the thekadar shall have preference over an heir who was separate: and

Provided, secondly, that the eldest of two or more such heirs shall be at liberty, at the time of succession, to resign his right in favour of another heir bearing the same degree of relationship to the deceased thekadar as he himself bears.

(*c*) a protected thekadar, whether holding under a written lease or a verbal agreement, shall be entitled to a renewal of his lease on its expiry, on his agreeing to farm his village at a fair and equitable theka-jama;

(*d*) in the event of any dispute arising between the proprietor and the protected thekadar as to what is a fair and equitable theka-jama, the matter shall be referred to the Deputy Commissioner, whose decision shall, subject to revision by the Commissioner and Chief Commissioner, be final;

(*e*) not more than one enhancement of the theka-jama or, where it is so specially provided in the terms of the settlement of the village, no enhancement of the thekajama shall be imposed on a protected thekadar during the currency of a settlement;

(*f*) all miscellaneous dues and cesses, unless specially authorized by the Chief Commissioner, shall be included in the thekajama payable under the lease; and

(*g*) a protected thekadar shall comply with the rules made under section 124-A for the management of malguzari forests.

(5) In any proceedings before a Court for the ejectment of a thekadar, gaontia or farmer, if it appears that the thekadar, gaontia or farmer has filed an application before a Revenue Officer to obtain a declaration that he is protected, or if he files such an application before the Court, the Court shall stay proceedings until the application has been disposed of in accordance with the provisions of this Act, and shall, if the application

is filed before itself, forward such application to the Deputy Commissioner or Settlement Officer for disposal.

(6) If any protected thekadar, gaonita or farmer is shown to have, since the commencement of the Central Provinces Land-revenue Act, 1898, contravened, or to be contravening, the conditions of his tenure as contained in clause [*a*] or clause [*g*] of sub-section [4], or to have grossly mismanaged the village held by him in lease, the Settlement Officer or Deputy Commissioner may, with the previous sanction of the Chief Commissioner, declare such thekadar, gaontia or farmer to have forfeited the protection previously conferred on him under this section, and such thekadar, farmer or gaontia shall from the date of such declaration cease to be protected.

(7) Nothing in this section shall affect the liability of any protected thekadar, farmer or gaontia to ejectment in execution of a decree for ejectment passed, in accordance with any law for the time being in force and not inconsistent with this Act, on the ground—

(*a*) that he has failed to pay theka-jama legally payable by him;

(*b*) that he has diverted the culturable land of the village to non-agricultural purposes, or is chargeable with some act or omission which renders him liable to be ejected.

Note I.—In several districts, which have not yet been brought under settlement, proprietors are taking steps to procure the ejectment, through the medium of the Civil Courts, of thekadars, whose claims to protection under this section might be recognized at settlement, were they left in possession till then. Under section 132 (i), the Deputy Commissioner has the powers of a Settlement Officer for the protection of thekadars and can, therefore, at once intervene to stop such ejectments should they be attempted. Deputy Commissioners of districts in which settlement operations have not yet begun, should, therefore, arrange to keep themselves informed of any ejectment suits of this nature which may be instituted in the Civil Courts, and should apply to have the trial postponed until executive enquiries have been made into the equities of the case.

Under section 65-A as originally introduced by the Amending Act of 1889, the Settlement Officer (or the Deputy Commissioner when there was no settlement in progress) had the power to enquire into the claims of thekadars who had been in possession since the last preceding settlement, or had established the village or substantially improved it, and to protect them from arbitrary enhancement or ejectment. This step required the previous sanction of the Chief Commissioner, and was effected by the insertion of clauses defining their status in the Wajib-ul-arz. The law was silent on many points which were likely to arise, such as the payment of rent, the powers of the thekadar, and so forth, and it contained no provision for re-instating thekadars ejected before the order protecting them was passed, or for enabling a Settlement Officer to protect them in their home-farm only, instead of in the whole village. These defects have now been remedied in the substituted section 65-A, which should be carefully studied by Revenue Officers. The qualifications for protection remain the same as before, except that the length of tenure qualifying for the privilege is now a fixed period of twenty years, instead of one varying with the length of time which has elapsed since the last settlement. The attention of Deputy Commissioners is specially drawn to sub-section (3) providing for the re-instatement of ejected lessees who had earned protection, and especially to the explanation attached to that sub-section. This latter is intended to apply to a class of cases which require immediate action or none at all, namely, to that of lessees who were ejected not more than six years before the passing of the Act, that is to say, subsequently to the 1st of the January 1893, and applied within a reasonable time, that is to say two years, to be re-instated. Several such cases occurred in the districts of Seoni and Balaghat, and others like them have doubtless occurred in other districts also. Deputy Commissioners and Settlement Officers should do their best to trace cases of this kind, and re-open any in which their then want of power to re-instate the ejected lessees has caused serious hard-ship. Action under this special explanation in relief of persons who were prejudiced by delay in revision of the law is of course permissive, and there may well be circumstances in which the re-opening of the case would cause an amount of hardship to innocent parties with which the advantage to the ejected lessee after this lapse of time would be incommensurate.

The rights and liabilities of a protected thekadar are now clearly defined by sub-sections (4), (6) and (7), his obligation on pain of forfeiting his protection to manage the village well, observe the malguzari forest rules, and pay his *theka jama* punctually being likewise affirmed. The chance of conflict of jurisdiction between the Civil and Revenue Courts, which frequently arose under the old section, is now obviated by the provisions of sub-section (5), which requires a Civil Court to stay proceedings in ejectment suits when the defendant thekadar applies for protection. It has also been made clear in sub-section (1) that a thekadar cannot contract himself out of the advantages of the section.

Note.—The rent payable by a protected thekadar can only be enhanced either by agreement of parties or by an order of the Deputy Commissioner. (C. P. L. R. XII. 39 Lachman Teli vs. Seth Dhanrupmal proprietor of the firm of Raghunath Dass Hamirmal.)

A declaration of protection under section 65 A of the Land-Revenue Act relates back to the date on which but for such declaration the thekadar would have been liable to be ejected. If the proprietor has brough a suit to eject the thekadar his right to recover theka-jama for the period during which the ejectment proceedings are pending only accrues on the date on which the thekadar is declared to be protected. (C. P. L. R. XVI. 33 Tulsiram Bapu vs. Mt: Janku widow of Ramdin)

Settlement Officer to apportion assessment over lands held in severalty;

66. When the whole of the land comprised in a mahal is held in severalty, the Settlement Officer shall apportion to the several holdings the amount with which such land is assessed under a settlement or sub-settlement.

When only part of the land comprised in a mahal is held in severalty, the Settlement Officer shall apportion such amount to the part held in common and the part held in severalty, and shall further apportion to the several holdings the amount to which they are liable under the former apportionment.

to redistribute land according to custom.

67. When by established custom the land held by each proprietor in any mahal is subject to periodical redistribution, the Settlement Officer may, in his discretion, on the application of the proprietors, make such redistribution according to such custom.

Procedure in Ryotwari Settlements.

Assessment of ryotwari villages.

67-A. (*1*) The Chief Commissioner may make rules for the assessment of land held by ryots direct from the Government.

(*2*) Such rules may provide for the sub-division of occupied and unoccupied land into survey-numbers on each of which a separate assessment shall be made:

Provided that no such survey-number shall include land occupied in separate interests by more ryots than one at the time of its formation.

(*3*) Where the lands of a village have been divided into survey-numbers, on each of which a separate assessment has been made, the village may be declared by the Chief Commissioner to be a regularly settled ryotwari village.

(*4*) The assessment made on a survey-number may be either fixed or progressive, or in the form of rates chargeable according to the results of each year or harvest.

Assessment to whom to be offered.

67-B. (*1*) The assessment of each survey-number in a regularly settled ryotwari village shall in the first place, be offered to the ryot (if any) holding the survey-number.

(*2*) If such ryot refuses to accept the assessment, he may be ejected as if for non-payment of revenue, and the assessment may be offered—

(*a*) to any co-partner of the ejected ryot, and, if he also refuses,

(*b*) to any other person.

Assessment of unoccupied survey-numbers.

67-C. A survey-number formed from unoccupied land in a regularly settled ryotwari village may be allotted by the Settlement Officer at the time of settlement or by the Deputy Commissianer during the currency of the term of settlement to any person who accepts the assessment made upon it.

Responsibility of ryots for assessment.

67-D. (*1*) A ryot who has accepted the assessment of a survey-number in a regularly-settled ryotwari village, and his representatives and assigns, shall be responsible for the payment of the land-revenue assessed on such survey-number during the term of settlement, unless he or they has or have relinquished the survey-number by presenting at the tahsil office a written notice of relinquishment.

(*2*) Such notice of relinquishment shall take effect from the first day of April next following the date of the presentation thereof.

Right of ryot inheritable but not transferable

67-E. (*1*) The right of a Government ryot in a survey-number held by him shall devolve as if it were land, but is not transferable except to a person who, if he survived the ryot, would inherit his right, or to a co-sharer in such right, or, with the permission of the Deputy Commissioner, by a lease to a sub-tenant cultivating under the ryot.

(*2*) The right of a ryot in a survey-number held by him shall not be sold in execution of a decree.

(*3*) A ryot is not entitled to claim partition of a survey-number, but the Deputy Commissioner may, with the previous sanction of the Chief Commissioner, partition a survey-number and apportion the assessment between the holders thereof.

(4) Nothing in this section shall affect the rights of ryots on whom proprietary rights in survey-numbers held by them have been conferred by special orders.

Power to make rules for survey-numbers.

67-F. The Chief Commissioner may make rules—

(*a*) prescribing the procedure under which unoccupied survey-numbers may be alloted to ryots during the currency of the term of a settlement;

(*b*) providing for the appointment, in the case of survey-numbers held by two or more ryots in co-partnership, of one of such ryots to be primarily responsible for the payment of the land revenue assessed on such survey-numbers;

(*c*) providing, in cases in which the assessment is in the form of rates chargeable according to the results of each year or harvest, for the manner and time in and at which the amount chargeable is to be notified to the ryot.

Note—The Chief Commissioner has issued the following executive orders regarding the allotment of survey-numbers in ryotwari villages:—

1. Land may be allotted either (*a*) to ryots direct, or (*b*) though the agency of a patel. Save as is provided in the special rules for rice villages, allotment shall always, where possible, be made to ryots direct, and the agency of patels be only employed in cases where owing to remoteness or any other cause, ryots cannot be induced to settle

without a leader.

2. A person wishing for land must take a whole survey-number or number of survey-numbers. Survey-numbers cannot be divided. But two or more persons may take up a survey number in partnership, provided that the name of any one of them will be entered in the kabuliat and records as khatedar.

3. The maximum area which shall ordinarily be allotted to a patel or to a ryot shall be as fixed for the district by the orders of the Commissioner of Settlement and Agriculture.

4. Persons taking survey-numbers must pay for their permanent demarcation according to a scale fixed for the district. Such payment should ordinarily be made at the time the application is put in, and will be refunded if the application is refused.

5. Persons taking survey-numbers may cut the wood on the ground unless it is specially valuable, when the Forest Department will be authorized to cut and clear it. Provided that the cutting of fruit-bearing trees may be prohibited by special orders.

6. The object of Government in setting independent villages is to procure resident cultivators, and in villages where a separate basti is to be established, persons taking land will be expected to reside unless specially exempted. Land will not ordinarily be allotted to others than agriculturists.

7. Applications for land may be refused without giving reasons.

(*a*) *Special rules for allotment to ryots direct.*

8. Applications for survey-numbers should be presented unstamped, in the form annexed, to the Tahsildar who will submit them to the Deputy Commissioner for his orders. Special arrangement may, however, be made for allotment on the ground by special agency. In the case of there being competition for land, a date will be fixed for the disposal of applications, and the alloting officer will have the option of selecting. In backward tracts, where this system of allotment is

found to be unworkable, the Deputy Commissioner may, with the previous sanction of the Commissioner, dispense with such formal applications and may permit the allotment of land to be made by the managing (mukaddum) patel or by the Revenue Inspector, or under any other system which may be found suitable.

9. A kabuliat in the annexed form will be taken from each ryot at the time of allotment.

10. The assessment due on allotted numbers will ordinarily be payable from the 1st July next succeeding the date of allotment. But the term may be extended for special reasons under the sanction of the Commissioner of the Division.

(b) *Special rules for allotment through pateles.*

(i) GENERAL.

11. A patel who successfully settles a village under Rule 18 will have the title of "watandari patel." His tenure will be hereditary, but not transferable or liable to partition. He shall be entitled to commission on the revenue collected by him at a favoured rate to be fixed under the orders of the Chief Commissioner for the term of settlement.

12. Ryots who settle under a patel will be Government ryots, and not the patel's tenants.

13. A watandari patel will pay jama on his land like the ryots, and his remuneration will be by commission on the revenue collected by him.

14. A watandari patel shall be bound on pain of removal to live in his village, unless he obtains special permission to keep an agent there instead of residing himself.

15. A watandari patel will be liable to dismissal if he fails to settle his village under the rules, or for gross misconduct. In such cases he will be liable to ejectment from all land held by him in excess of the ryoti maximum.

(ii) ESTABLISHMENT OF NON-RICE VILLAGES THROUGH A PATEL.

16. The allotment of land to ryots will be effected by Government

and not by the patel, though the recommendations of the patel will receive full consideration. It will be subject to the general conditions laid down by Rules 1—6.

17. The maximum area which the patel may take up for his own cultivation will be fixed in the terms of each grant, and shall not be less than treble the ordinary maximum for ryots.

18. It will be a condition of the grant that the patel shall arrange for the taking up of half the survey numders in the village within three calendar years of the date of receiving possession. The grant of watandari right by sanad will not be made until this condition has been fulfilled.

19. No revenue will be demanded for the village from the patel for a period of three years, commencing on the 1st July next following the date of grant. In the interim the patel may collect and appropriate the revenue payable by ryots under Rule 10. Ryots will ordinarily be allowed under this rule to hold free of revenue till the year commencing on the 1st July next but one following the date of allotment.

20. An agreement will be taken from a patel in the annexed form when the grant is first made to him.

(iii) ESTABLISHMENT OF RICE VILLAGES THROUGH A PATEL.

21. In the case of rice land villages the establishment of which requires the expenditure of money on a tank, allotment to a patel may be made in anticipation of detailed survey and assessment, in accordance with the procedure and principles described below. The patel will be left to make his own arrangements for allotting land to ryots and levying revenue from them, until the village is brought under survey and settlement.

22. The lessee of a rice village will be entitled to the status of watandari patel on the expenditure in constructing an irrigation tank of a sum [to be fixed by the Deputy Commissioner with reference to the size and requirements of the village,] of not less than Rs. 200,

within a period fixed by the Deputy Commissioner.

23. The period for which the revenue of the village will be remitted will depend on the amount of money spent on a tank or tanks in accordance with the following scale, the maximum period of remission being twenty years:—

Expenditure.	Term for which revenue to be remitted.
Rs. 500 or less	One year for every Rs. 100.*
Exceeding Rs. 500	
For the first Rs. 500 ...	One year for every Rs. 100.*
Rs. 501 to 1,500 ...	„ „ „ 200.*
„ 1,501 and over ...	„ „ „ 300.*

* Omitting fractions if less than half the amount and counting them as whole sums if as much as half the amount.

Illustrations

(1) On an expenditure of Rs. 750 revenue would be remitted for six years thus—

	Rs.
Five years for	500
One year for	200
Nil for remaining	50

(2) On an expenditure of Rs. 3,250 revenue would be remitted for 16 years thus—

Five years for	500
Do.	1,000
Do.	1,500
One year for	250

24. The agency by which the expenditure on irrigation tanks is to be ascertained will be as follows:—

(i) Where the expenditure does not exceed Rs. 500, it should be estimated by a Tahsildar or an Assistant Settlement Officer with the aid of a local panch;

(ii) Where the expenditure exceeds Rs. 500, but does not exceed Rs. 1,000, it should be estimated by an Assistant Commissioner or an Assistant Settlement Officer with the aid of a local panch;

(iii) Where the expenditure exceeds Rs. 1,000 it should be estimated by the Deputy Commissioner or Settlement Officer with the aid of a local panch.

All estimates made under these rules should, if possible, be checked by a duly-qualified Public Works Department official.

25. The practical carrying into effect of these rules will be left to Deputy Commissioners under the guidance and control of Commissioners of Divisions, but it should be carefully noted that before any village is settled on these terms, it must have been (*a*) formally excised from Government forests, (*b*) completely demarcated, (*c*) peripherally surveyed and mapped by the Settlement Department.

26. These villages will ultimately be brought under ryotwari settlement, the patel receiving a commission on the revenue, which will be calculated on a more liberal scale than that allowed to ordinary patels. But the institution of operations for survey and assessment will be postponed until the period of revenue remission has nearly expired, and, meanwhile, the patel will be able to make his own arrangements with his ryots. All grants should be entered in a register in the annexed form, and the Deputy Commissioner will be responsible that arrangements are made for the introduction of settlement at least a year before the concession expires.

27. An agreement embodying the terms of grant will be taken

from every patel through whom a village is settled under these rules at the time he is given possession. He will be liable to the provisions of Rules 14 and 15 above.

Management.

28. Neither patel nor ryots will have any right of user whatever over areas recorded as *minhai darkhtan* or unallotted numbers, though such user may be permitted by the Deputy Commissioner. They will not be permitted to cut trees fringing streams, trees used as survey marks, or fruit trees specially reserved at settlement.

29. The construction of a drinking-water well for public use will entitle the constructor to a release of revenue on any survey-number held by him up to an amount equal to 12 per cent. On his outlay, for a period of 15 years from the date of construction. Provided that this concession be not made on account of more than two wells in each village. The planting of a mango grove, open to public use, will entitle the person planting it to a remission of the revenue on the area occupied by the trees, from the date of the establishment of the grove, for such period as it is maintained for public benefit. Certificates will be given in both classes of grants. But no such grants shall be made without the Commissioner's previous sanction.

30. Unallotted survey numbers are not to be managed by Government with the object of obtaining forest revenue from them, and the sale of forest produce from such unallotted numbers is prohibited.

Subject to the condition that no timber may be cut, such areas should be left free for the use of the villagers until allotted, provided that if in consequence of this privilege it be found that the villagers are discouraging allotment, the Deputy Commissioner may arrange for their lease through the patel to the village community or, with the previous sanction of the Commissioner, to an outsider, if the village community refuse to accept the lease or persist in discouraging allotment.

Form of Application for a survey number.

Serial No.

Name of applicant, father's name, caste means of livelihood and residence.	Name of village in which land is applied for	Khasra number of the survey number which is applied for.	Area of survey number.	Purpose for which required.

1. I have myself seen and approved of the survey number for which I apply.
2. I agree to pay the Government revenue assessed on the survey number and to accept the conditions of settlement as prescribed by Government.

Dated——————————(Sd.)——————————

Form of Ryoti Acceptance.

I ... ... ,son of ... ... ,caste ... at present residing at ... ... ,hereby accept the assessment of survey number ... ... in mauzah ... jama Rs. ... ,on ryotwari terms, under the provisions of section 67-D of the Central Provinces Land-revenue Act, as amended by Acts XVI of 1889 and XII of 1898.

2. I agree to pay the jama through the patel, with effect from the 1st July 190 , together with cesses as below:—

	Rs.		
Road, School and Post Office	...	...	...
Additional Rate	...	...	...
Patwari Cess	...	...	...

Nothing further will be payable to the patwari, but I agree to subscribe to remunerate a kotwar at such rates as may be prescribed by the Chief Commissioner not exceeding one anna in the rupee of revenue. The jama will not be liable to enhancement till the year.

3. I acknowledge myself bound by the following conditions:—

(i) I have no claim to the produce of any land outside my survey- number or of any land recorded as minhai.

(ii) I will not cut any trees on the borders of nalas adjoining or included as minhai in my survey-number—nor will I cut mahua or mango trees growing in my survey-number, or any trees which have been used as survey marks.

(iii) I will construct a house in the village and will myself reside there permanently.

I admit that a breach of any one of these conditions will warrant my ejectment.

Signed————————————

Dated————————————

Countersigned————————————

Deputy Commissioner or

Assistant Settlement Officer.

Form of Agreement of Patel.

I ... ,son of ... ,caste ... ... ,now residing at ... ,engage to settle the waste village of ... ... ,to keep the ryots contented, and to collect and pay in regularly the Government revenue due on all occupied survey-numbers in all the villages. In return for this the Government appoints me to the office of patel and grants me the additional privileges of (a) holding more land than I should be entitled to as a ryot, and (b) of a drawback on the revenue collected by me each year, which during the currency of this settlement will be fixed at ... per cent. I acknowledge myself bound by the following conditions:—

(i) The office of patel is hereditary, but not transferable.

(ii) I will never allow the number of resident, and revenue-paying ryots to fall short of a number sufficient to keep at least half the survey-numbers in the village occupied, allowing not more than two survey-numbers to each ryot, and not taking myself more land than is now allotted to me.

(iii) I will maintain a small house for travellers if required by the Deputy Commissioner to do so.

(iv) I will myself reside permanently in the village with the ryots.

(v) I will perform such other duties as the Chief Commissioner may by rule from time to time prescribe.

I admit that a breach of any of these conditions will warrant my removal from the office of patel. If I am removed from the office of patel, I shall be liable to be ejected from all land held by me over and above the maximum area which is ordinarily allowed to ryots.

Signed————————

Dated————————

Countersigned————————

Deputy Commissioner or
Assistant Settlement Officer.

Register of rice land villages granted under Resolution No. 5817, dated the 11th December 1893.

Name of village or plot with details of tract in which situated.	Area.	Name of lessee with date of original grant.	Amount fixed for expenditure on tanks with details of period fixed.	Abstract of report as to construction of tanks with details of sum expended and date of report.	DATE OF.		If watandari pateli status granted, year up to which revenue remitted	Year in which settlement operations should commence.
					Grant of watandari pateli rights	Resumption of lease on non-fulfilment of conditions.		
1	2	3	4	5	6	7	8	9

Provision of sections 55 and 56 applicable to ryotwari settlement.

67-G. The provisions of Sections 55 and 56 shall, so for as they can be made applicable, apply to ryotwari settlements made under this Act.

Land-revenue now payable by ryots to be deemed to be fixed under this Act.

67-H. The land-revenue payable at the commencement of the Central Provinces Land-revenue Act, 1889, by ryots holding survey-numbers in villages declared to be regularly settled ryotwari villages, shall be deemed to have been assessed under the provisions of this Act.

Ryots holding Government land not included in ryotwari villages.

67-I. Ryots who hold Government land not included in a regularly settled ryotwari village and who are not tenants within the meaning of this Act, shall be liable for the payment of such land revenue as may be assessed in accordance with rules made under this Act on the land held by them:

Provided that such a ryot shall not be compelled to pay revenue for land which he has vacated before the first day of April next before the commencement of the agricultural year, on account of which the claim for such revenue arises.

Note.—The abandonment by one of two joint holders of a survey-number does not necessarily enure in favour of the other joint holder. (C. P. L. R. XVI. Nanha Bairagi vs. Mansing Gond.)

* * *

CHAPTER—VI.

OF CERTAIN INVESTIGATIONS BY THE SETTLEMNT OFFICER AND THE PREPARATION OF THE RECORD-OF-RIGHTS.

Settlement Officer to ascertain proprietors.

68. The Settlement Officer shall ascertain the persons who are in possession as proprietors of the land comprised in each mahal.

Determination and record of sir-land.

69. (1) The Settlement Officer shall ascertain and determine the extent of all the land which is held as sir-land as defined in section 4-A, and which has not lost its character as sir-land under the provisions of section 45 of the Central Provinces Tenancy Act, 1898, and shall record the same as sir-land.

(2) The Settlement Officer shall also record as sir-land—

(a) land which is at the time of his inquiry cultivated by the proprietor, or one of the proprietors thereof, and has been continuously so cultivated for a period of not less than twelve consecutive years; and

(b) land which is at the time of his inquiry cultivated by the proprietor, or one of the proprietors thereof, and having been broken up from waste-land by such proprietor or one of such proprietors, has since been continuously cultivated by him for a period of not less than six years:

Provided that no land shall be recorded as sir-land under this sub-section if the total area of sir-land within the mahal already exceeds, or will by such record be made to exceed, one-quarter or the total occupied area of the mahal:

Provided, further, that the Settlement Officer may, with the previous sanction of the Commissioner, exempt any mahal or part thereof from this limitation in respect of land falling under clause (*b*) of this sub section.

(*3*) When a part of such land as is referred to in sub-section (2) is excluded from the record of sir-land under the proviso to that sub-section, the proprietor shall have the right to choose the particular fields which are to be excluded.

(*4*) An order or entry of the Settlement Officer recording, or omitting or refusing to record, any land as sir-land under sub-section [1] shall be final, unless and until it is reversed or modified by the decree of a Civil Court in a suit instituted under section 83 at any time after the record is attested by the Settlement Officer, or his order regarding the entry is passed, and within one year after the settlement comes into effect; and an order or entry recording, or omitting or refusing to record, any land as sir-land under sub-section [*2*] shall be final, unless and until it is reversed or modified on appeal or revision in accordance with the provisions of sections 22 to 26.

(5) The Settlement Officer shall, at the request of any proprietor, furnish him, free of cost, with a list of all the land which has been recorded as sir-land under this section, and is situated within the mahal or patti owned wholly or partly by such proprietor.

(6) All land not falling within the purview of section 4-A, sub-section [1], shall be presumed, until the contrary is proved, not to be sir-land.

Explanation.—For the purposes of the section the word "proprietor" shall be deemed to include an assignee of proprietary rights, but not a malik-makbuza,

Note.—Under section 69 an entry of the Settlement Officer omitting to record any land as sir-land is final unless and until it is reversed or modified by the decree of a Civil Court in a suit instituted under section 83 within one year after the Settlement comes into effect. (C. P. L. R. XV. at Page 13, Kodoo Rao vs. Baxi.)

Settlement Officer to decide disputes among shareholders regarding management of mahal,

70. The Settlement Officer shall ascertain the customs or rules by which the proprietors in each mahal are mutually bound as to the granting of pattas, the ejectment of tenants, the realization and distribution of rents and other profits, the payment of land revenue, village expenses and other charges, and generally as to the control and management of the mahal; and shall decide all disputes and record all agreements regarding the matters mentioned in this section.

to determine through what lambardars revenue shall be paid.

71. The Settlement Officer shall determine through which of the lambardars or sub-lambardars the amount of revenue payable by each proprietor, sub-proprietor or malik-makbuza shall be paid.

Note.—A, the *Lamberdar* of a village sued a *Malik-makbuza* for arears of revenue. The latter pleaded that he had already paid it to a co-sharer by virtue of a private partition of the village among the co-sharers, under which each of them collected rents from certain particular tenants. The first Court holding the partition proved, dismissed the Plaintiff's suit. The Lower Appellate Court reversed the first Court's decision on the ground that as the *Lamberdar* is responsible for the Government revenue, he ought to be permitted to collect the rents.

Held that a *Malik-makbuza* does not pay rent to the proprietors. His land is "separately assessed with *revenue* in a *Mahal*" *vide* Section 4, Sub-section 10 of the Land Revenue Act, and it is quite clear, reading Sections 71, 138, and 140 together, that save in the exceptional case of his being ordered under the provisions of the last of these Sections to pay the revenue assessed on his holding direct into the Government treasury, he must pay it through a *Lambardar* or a *Sub-lambardar* and not to a co-sharer, any private arrangement among the co-sharers notwithstanding. (C. P. L. R. VII. 133 Baboosing vs. Daxin and Laharising)

to ascertain status and rents of tenants.

72. The Settlement Officer shall ascertain, and record for each mahal, the status of all tenants occupying land therein, the lands respectively held by them, the conditions on which they respectively hold such lands, and the rents [if any] payable by them respectively.

Note.—In a case in which the Plaintiff sued the Defendant as his sub-tenant for rent, the claim being for a sum less than Rs. 100, and where the Defendant set up a plea that he was not sub-tenant under the Plaintiff but was tenant of the Malguzar; *Held*-that an appeal lay under Section 71 of the Tenancy Act, as a question relating to title to land had been decided by the decree as between parties having conflicting claims thereto.

An entry in the record-of-rights relating to a holding is not an award. It is merely a statement as to a condition of facts which in the course of his inquiry under the provisions of Section 72 of the Land Revenue Act the Settlement Officer has ascertained. The burden of proving the incorrectness of such an entry lies very heavily on a person who disputes its correctness, but it is not final and conclusive, subject only to the result of a suit under Section 83 of the Land Revenue Act. (C. P L. R. X. 33 Lachman Ram vs. Bhimsen, Hariram and Gorelall.)

Note.—Distinction between the terms *muafi khairati* and *malik-makbuza muafidar-malguzar* explained. The former entry simply means that the land is held rent-free or at a low rent by the favor of or under agreement with the Malguzar [Settlement Code, Para 57] The latter entry refers to a Malik-makbuza who holds revenue free as against the Malguzar. (C. P. L. R, XI. 129 Muneerkhan, Korokhan Faizkhan & Aliyarkhan vs. Mangalkhan, & Mt. Shah-noorbi.)

Enquiry into claims to hold free from revenue as against Government.

73. The Settlement Officer shall investigate all claims against the Government to hold land free from revenue or at less than a full assessment, or to receive the whole or part of the land revenue assessed on land which is not free from revenue.

Power of Chief Commissioner to make rules.

The Chief Commissioner may, with the previous sanction of the Governor General in Council, make rules determining the principles by which the Settlement Officer shall be guided in the disposal of claims coming under this section.

Enquiry as to claims to hold free from revenue as against malguzars.

74. When any land not being land which any person is entitled to hold free from revenue as against the Goverment is held by a proprietor, whether himself a malguzar or not, who claims to hold it wholly or partially free from revenue as against the other malguzars of the mahal, the Settlement Officer shall decide whether the claimant is entitled to be exempted from paying the whole or any part of the revenue which would otherwise be payable in respect of such land, and, if he decides that the claimant is so entitled, shall also determine the conditions under which, and the term for which, the claimant is entitled to such exemption:

Provided that no decision under this section shall exempt any land from the payment of revenue, when the mahal in which such land is comprised is sold for arears of revenue.

Chief Commissioner may make rules for disposal of such cases.

The Chief Commissioner may make rules for the guidance of Settlement Officers in dealing with cases under this section.

Note.—In a suit to recover arrears of revenue on account of land which has been held revenue free as against the other Malguzars of the Mahal the jurisdiction of the Civil Court is restricted to giving effect to any decision recorded by a Settlement Officer or by a Deputy Commissioner, under Section 74 of the Land Revenue Act. (C. P. L. R. XI. 45 Ramlal & Jhamlal vs. Seth Fatehlal & Kanhaiyalal.)

Note.—Distinction between the terms *muafi khairati* and *malik-makbuza muafidar-malguzar* explained. (C. P. L. R. XI. 129 Muneer khan, Kotoobkhan, Faizkhan & Aliyarkhan, vs. Mangal Khan & Mt. Shahnoorbi.)

Time from which orders under sections 73 and 74 take effect.

75. When the Settlement Officer decides, under section 73 or section 74, that land which has been held free from revenue, or at less than a full assessment, is liable to pay revenue, or to pay the same at enhanced rates, such decision shall take effect from the first day of the agricultural year next ensuing; unless the Chief Commissioner directs that the amount payable in respect of such land on account of the revenue accruing due within any one or more of the last preceding twelve years shall be realized.

Settlement Officer to decide what village cesses are leviable.

76. The Settlement Officer shall determine and record the village cesses, if any, which are leviable in accordance with village custom, and the persons by and from whom, and the rates at which, they are leviable; and such cesses shall, if sanctioned by the Chief Commissioner, be leviable accordingly.

to determine certain disputes.

77. The Settlement Officer may determine disputes regarding any of the following matters [namely] :—

(a) the right of any lambardar, mukaddam, patwari, village-watchman or other village-servant to any customary dues or other remuneration, and his liability to render any customary service in return for such dues or remuneration;

(b) the rights of persons resident in the village, or holding lands comprised in the mahal, in or to the common land of the mahal and its produce, and the village-site;

(*c*) any customs relating to irrigation or to rights-of-way and other easements;

(*d*) any other rights and customs which the Chief Commissioner directs to be recorded in the administration paper.

Procedure in cases under sections 68, 69, 70, 72, and 77, clauses (*b*), (*c*) and (*d*)

78. If a dispute arises regarding any matter mentioned or referred to in sections 68, 69, [sub-section (*1*)] 70, 72, and 77, clauses (b), (c) and (*d*), the Settlement Officer shall decide it summarily after making such enquiry as he thinks fit, and shall not be bound to hear any party to such dispute, or to receive any evidence tendered by any such party; but in the case of every such dispute he shall record a proceeding stating the nature of such dispute, his decision thereon, the grounds of such decision, and such other particulars as he thinks fit.

Record of rights.

79. The Settlement Officer shall prepare for every mahal, or, if he thinks fit, for any group of neighbouring mahals, a record-of-rights, and shall include in it—

(*a*) the results of the enquiries made under this chapter in respect of such mahal or group; and

(*b*) any other matters which the Chief Commissioner may, by rules in this behalf, direct to be entered in such paper.

Chief Commissioner may make rules regarding record-of-rights.

80. The Chief Commissioner may make rules prescribing the language in which the record-of-rights shall be drawn up, the form of the papers of which it shall consist, and the manner in which such papers shall be signed and attested by the Settlement Officer and the parties interested in the matters to which they refer.

Record of-rights to be made over to Deputy Commissioner.

81. When the Settlement Officer has completed a record-of-rights in manner hereinbefore prescribed, he shall, subject to any order issued by the Chief Commissioner in this behalf, make it over to the Deputy Commissioner for custody.

Effect of entries in record-of-rights.

82. When the record-of-rights is duly made and attested, all entries therein shall be presumed to be correct until the contrary is shown.

Note.—A Malguzar sued to eject a tenant of an absolute occupancy land, out of a piece of land which, it was found on measurement, was in excess of the area entered at the settlement as the tenant's occupancy holding. There was no evidence to show when the tenant took possession of the excess land. The tenant alleged that there had been no change in the holding since the Settlement. Held, that there being no evidence to prove that the Settlement record is wrong, it must, under Section 82 of the Land Revenue Act, be taken to be true. (C. P. L. R. III. 189. Mt. Kashi Sethani Vs. Mt. Mangla)

Suits to contest certain settlement decisions or entries.

83. Any person deeming himself aggrieved by any decision under section 78, or by any decision or the Chief Settlement Officer in appeal therefrom, or by any entry made in the record-of-rights as to any

matter referred to in that section, may institute a suit in the Civil Court to have such decision set aside or such entry cancelled or amended:

Provided as follows:—

when any suit under this section is instituted for the cancellation or amendment of an entry, the Government, if it so desires, and all persons interested in the entry, shall be made parties to the suit:

no persons by whom the record-of-rights was signed, and no persons claiming through or under them, shall, without the previous sanction of the Chief Commissioner, institute any suit with a view to modify or set aside any entry relating to any matter mentioned in section 70 or section 77, clause (*b*), (*c*) or (*d*).

An entry in the record-of-rights relating to a holding is not an award. It is merely a statement as to a condition of facts which in the course of his inquiry under the provisions of Section 72 of the Land Revenue Act the Settlement Officer has ascertained. The burden of proving the incorrectness of such an entry lies very heavily on a person who disputes its correctness, but it is not final and conclusive, subject only to the result of a suit under Section 83 of the Land Revenue Act. (C. P. L. R. X. 33 Lachman Ram vs. Bhimsen, Hariram and

Gorelal.)

When a suit is instituted under section 83 of the Land Revenue Act a certified copy of the decision or entry sought to be set aside or cancelled must be filed with the plaint and the precise nature of the relief asked for must be clearly stated. The illegitimate sons of a Brahman cannot claim to retain possession of an occupancy holding belonging to their deceased father. (C.P. L. R. XIII. 141 Mt. Maina, Lala and Ganpat vs Ramkrishna, Mukund and Jaikrishna.)

Subject to the result of a suit instituted under section 83 of the Land Revenue Act an order or entry of a Settlement Officer recording, or omitting or refusing to record any land as sir land under sub-section (1) of section 69 is final. (C. P. L. R. XV. 12. Kodoo Rao Patel vs. Baxi son of Adku.)

Revision of record-of-rights by Chief Commissioner.

84. After an assessment has been confirmed by the Governor-General in Council, the Chief Commissioner shall not exercise, in respect of any entry of the descriptions referred to in section 83 duly made in a record-of-rights prepared in connection with such assessment and duly attested, the power of revision conferred by sections 25 and 31, unless it is proved that such entry was made inadvertently.

Proceedings regarding lands the property of Government.

85. In respect of lands declared to be the property of Government, the Settlement Officer shall, instead of proceeding as hereinbefore provided, conduct such operations, and prepare such record, as the Chief Commissioner may direct.

CHAPTER.—VII

OF SETTLEMENTS MADE BEFORE THIS ACT COMES INTO FORCE.

Former settlements deemed to have been made under this Act.

86. Settlements made before this Act comes into force shall be deemed, so far as may be, to have been made hereunder; and the provisions of this Act in regard to proceedings taken and records prepared by Settlement Officers in the making of settlements hereunder shall apply in like manner to proceedings taken and records prepared before this Act comes into force.

Effect of awards of proprietary rights at such settlements.

87. When a Settlement Officer or Settlement Court has, at any settlement made before this Act comes into force, made an award of proprietary rights in any land, all claims, which after consideration by such Officer or Court may have been expressly decided by him or it to be invalid, or inferior to the claims of the persons in whose favour the award was made, shall be barred both as against Government and as against the persons last mentioned; and no suit shall lie for the enforcement of such claims in any Civil Court.

The award at any such settlement of proprietary rights in land to a widow shall be deemed to confer on her those rights only which, in accordance with the personal law to which she is subject, she would enjoy in land inherited by her from her husband.

Notes.—1 An award of proprietary rights was made in favor of the widow of a Bairagi and his chela was declared entitled to succeed on the widow's death. *Held*, that this award had the effect of placing the chela in the position of a reversioner, and the possession of the widow or that of a purchaser from her could not be adverse to the chela. His right to recover the estate from the purchaser would accrue on the death of the widow. *Held further*, that where a widow could have raised money for a necessary purpose otherwise than by sale of the immoveable estate in her possession, a sale under such circumstances would not be binding on the reversioner. (C. P. L. R. I. 130 Puran-Das vs. Beni Ram.)

2. M and B were brothers. M died before the Settlement while in a state of union with B. At settlement B and M's widow D appeared as claimants to the villages which had been held jointly by M and B. The Settlement Officer after considering B's claim, awarded a half share to D for her life-time. *Held*, that under Section 87 of the Land Revenue Act, 1881, the award was conclusive and had the effect of breaking up the coparcenary property and to make the share conferred on the widow, separate property. After her death, the person to succeed to the estate she held under the settlement award, would be her husband's heir and not the heir of her husband's undivided brother. (C. P. L. R. II. 99 Mt. Dhamo vs. Shamlal and Udechand.)

3. B had four sons, D1, D2, G and S.. At the Settlement G alone appeared and on his admission, proprietary rights were conferred in equal shares on all the four brothers. Some eight years after this, D1, D2, and S applied for partition in the Collector's Court, and despite G's objections, their rights were affirmed to be those awarded at Settlement. While the partition proceedings were pending, G died leaving a minor son R. Thereupon with the consent of the family, D1 was appointed to manage the estate, the partition proceedings being dropped. This arrangement continued till June 1884, when R having attained majority refused to allow his three uncles to participate in the profits of the estate. The uncles accordingly filed a suit to recover their shares as

awarded at the Settlement. R pleaded *inter alia,* (1) a partition in the family previous to the Settlement under which the estate in dispute had, he alleged, fallen to his father's share and (2) limitation.

Held, that the award of proprietary right at the Settlement gave a clear title to the Plaintiffs and Sections 87 and 88 of the Land Revenue Act, 1881, barred any claim on the part of Gendu's heir to have the whole estate to himself on the ground that it had been allotted to his father by a partition previous to the Settlement.

Held, as regards the plea of limitation that no time could be counted previous, to 1861 when the Settlement award was made. That award gave a clear title to the Plaintiffs and as within 12 years of the date of the award G died, and D was put in management of the whole estate on behalf of the family, G's possession even if it could under the circumstances of the case be considered as adverse to his brother not having extended over a period of 12 years, did not extinguish the rights conferred on the Plaintiffs at the Settlement. (C. P. L. R. II. 116. Dadu and Dadi vs. Raja and Moti).

4. In the province of Nagpur a Malguzar was synonymous with a lessee, and leases were given for short periods, the rights of a lessee did not extend beyond his lease, and he could not claim a renewal.

When at settlement proprietary rights were conferred on a person R who had been recorded Malguzar on the death of the late Malguzar S, mainly because of what he [R] had done for the village—*held,* that thereby R acquired the proprietary right. The property thus obtained was surely self-acquired. Joint families are not found amongst Gosains, among whom the family system does not exist.

Held, that a Guru can alienate his property without his Chela's consent. In the absence of law or custom, there is no reason why the power of Guru should be restricted. [C. P. L. R. VI. 19 Vitoba and Sitaram vs. Laxamangir, Dharamgir and Balgir]

5. At the time of Settlement in the year 1868 the proprietary right in the estate in question was conferred upon Mt. Phando Bai and Mt.

Rewa Bai, the daughters of one Manikram, with whom the estate had been settled at the previous twenty years Settlement and who had died in the meantime. The two sisters partitioned the estate, each holding a separate eight annas share. Phando Bai, who was a widow, when the interest was conferred upon her at the Settlement, mortgaged her share. The Plaintiff Appellant is the son of Mt. Rewa Bai. He sued for a declaration that the mortgage is void beyond the life-time of Mt. Phando Bai and that he is her heir. *Held*, that in accordance with the provisions of the second paragraph of Section 87 of the Central Provinces Land Revenue Act 1881, the rights conferred upon Phando Bai at the Settlement were those only which under the Hindu Law she would enjoy in land inherited by her from her husband and that by implication those rights must at her death devolve upon the husband's heir or heirs. Though in practice hereditary claims were recognised to a very great extent, the actual rights were not inherited, but were conferred at the Settlement. [C. P. L. R. VI. 154 Narainsing vs. Mt. Rewa and Jagannath]

6. Stridhan ceases to be Stridhan when it passes by descent. An award of proprietary rights which gives a widow estate cannot take away from her rights obtained otherwise than through the award and already possessed by her. (C. P. L. R. XII. 143 Ramcharan and Gorelal vs. Jagannath, Moolchand, Jodhelal, (*minor*) through Jagannath and Moolchand.)

7. The effect of a Settlement award is not to break up any pre-existing coparcenary rights and to make the share conferred the separate property of the person on whom it is conferred. Where the award is in favor of a widow the estate will devolve not necessarily upon the heirs of her husband but upon the heirs of the last full owner. (C. P. L. R. XIII. 81 Rampershad Tiwari, vs. Anandilal and Kesrimal.)

8. The finality of an award of proprietary rights cannot be questioned on the ground that the devolution of the property is opposed to Hindu law. (C. P. L. R. XIV. 94 Mt. Janki vs. Pusa *alias* Umrao

& others.)

9. At the time of the last Settlement proprietary rights in a village were conferred on a widow who recently died leaving a daughter. On the death of the widow her husband's nephews took possession and resisted the claim of the daughter upon the ground that their father and the husband of the widow formed a joint undivided family. *Held*, that the burden of disproving the presumption arising out of the award lay on the Defendants. (C. P. L. R. XVI, 3 Mt. Saraswati Bai vs. Waman Rao and Kaluram.)

When suits for proprietary rights will lie in Civil Courts.

88. Any person whose claim to proprietary rights in any land was not expressly decided by such Officer or Court may sue in a Civil Court to establish such claim; and, if he can prove that, when proprietary rights in such land were awarded by such Officer or Court to other persons, he was entitled to interests therein of the same nature as those upon consideration of which the award was made, the Civil Court may declare him entitled to a proprietary right of such nature and extent in the land as it may deem just.

Notes.—B had four sons, D1, D 2, G and S. At the Settlement G alone appeared and on his admission, proprietary rights were conferred in equal shares on all the four brothers. Some eight years after this, D1, D2 and S applied for partition in the Collector's Court, and despite G's objections, their rights were affirmed to be those awarded at Settlement. While the partition proceedings were pending, G died leaving a minor son R. Thereupon with the consent of the family, D1 was appointed to manage the estate, the partition proceedings being dropped. This arrangement continued till June 1884, when R having attained majority refused to allow his three uncles to participate in the profits of the estate. The uncles accordingly filed a suit to recover their shares as awarded at the Settlement. R pleaded *inter alia*, [1] a partition in the family previous to the Settlement under which the estate in dispute had, he alleged, fallen to his father's share and (2) limitation.

Held, that the award of proprietary right at the Settlement gave a clear title to the Plaintiffs and Sections 87 and 88 of the Land Revenue Act, 1881, barred any claim on the part of Gendu's heir to have the whole estate to himself on the ground that it had been allotted to his father by a partition previous to the Settlement.

Held, as regards the plea of limitation that no time could be counted previous to 1861 when the Settlement award was made. That award gave a clear title to the Plaintiffs and as within 12 years of the date of the award G died, and D was put in management of the whole estate on behalf of the family, G's possession even if it could under the circumstances of the case be considered as adverse to his brother not having extended over a period of 12 years, did not extinguish the rights conferred on the Plaintiffs at the Settlement (C. P. L. R. II. 116 Dadu and Dadi vs. Raja and Moti.)

Before the last Settlement Mauza N. was held by K for some time. He with the consent of the Government resigned the management of the village and made it over to his grandson P to the exclusion of his son R. At the proprietary enquiry, rights were conferred on P alone to the exclusion of R and another grandson of K, both of whom had preferred claims to proprietary rights. P having made a will in favor of two of his sons, his other sons brought a suit for partition and recovery of their shares. *Held*, that when proprietary right is conferred on the father, the only way in which the sons can claim a share is by shewing that they were entitled to interests in the property of the same nature as those upon consideration of which the award was made. The Plaintiffs in this case could not show this and even if they could show it, they could not claim a share under Hindu Law, but only such right as the Court might deem just. Further when P took the village, he took it, not by inheritance from his father, but with the consent of the father and the Government, and to the exclusion of R, who if the property had been heritable, would have had the prior claim. Again until proprietary rights had been conferred at the Settlement, there was no property in the village which could become ancestral property. On these grounds the Plaintiffs were held not to have any right to claim partition on the ground that N was ancestral property in the hands of the father in which they had a right by birth co-equal with the father (C. P. L. R. III. 105 Mt. Mankuwar and 4 others vs. 1 Pyari Lall 2 Ram Lall.)

In cases in which proprietary rights were conferred on a father at the settlement, the only way in which the sons could claim would be by showing that they were entitled to interests in the property of the same nature as those upon consideration of which the award was made and even then they could not claim a share under the Hindu Law but only such right as the Court might deem just. The period of limitation in such cases is 6 years in accordance with Article 127 of the second Schedule of the Limitation Act. Article 127 does not apply in such cases. (C. P. L. R. VI. 40 Rodee vs. Ganpati, Suryabhan, Baliram and Govinda).

Chief Commissioner may allot waste land to malik-makbuzas entitled thereto.

89. When at any settlement made before this Act comes into force malik-makbuzas have been declared entitled to a portion of the waste lands comprised in any mahal, the Chief Commissioner may, notwithstanding anything contained in the record of such settlement, prescribe the extent of such portion and the mode in which the same shall be assigned to them, and may determine the nature and extent of their interests therein and the conditions on which they may hold it.

Notes.–Malik Mukbuza right is a creation of the settlement and if the Settlement Officer gave that right to a certain person in respect of certain fields, a Civil Court can not go behind the Settlement award and find that there was a mistake in the award and the right should have been conferred with respect to certain other fields. (C. P. L. R. I. 146 Sheodayal Patel vs. Balaram.)

PART.—IV.

OF REVENUE ADMINISTRATION.

CHAPTER.—VIII.

OF THE COLLECTION OF LAND-REVENUE.

Power of Chief Commissioner to regulate payment of land revenue.

90. Notwithstanding anything contained in the record-of-rights of any village, the Chief Commissioner may fix the number and amount of the instalments, and the times, places and manner, at and in which land revenue, whether payable direct to the Government or not, shall be paid.

Until the Chief Commissioner otherwise directs, all such payments shall be made on the dates, in the instalments, in the manner and at the places on, in and at which they are payable when this Act comes into force.

Note.-The provision of section 90 refer exclusively to the land revenue payable directly or indirectly to the Government. On certain dates fixed by the Chief Commissioner the revenue assessed on a malik-makbuza plot is payable to the lambardar of the mahal and the revenue assessed on a mahal is payable by the lambardar to the Covernment. Any sum not so paid is deemed to be an arrear. Section 90 has obviously no connection with any arrangements which the share-holders may have made amongst themselves in regard to the management of the mahal. [C. P. L. R. XI. Page 114 Balaji Sonar vs. Govinda and Dhansing].

Notification No. 5170, dated the 21st November 1894, as amended by Notification No. 4044, dated the 12th August 1901, and Notification No. 5395, dated the 23rd September 1902, and Notification No. 1143, dated the 14th March 1903.

I.—The instalments of Land Revenue payable direct to Government shall be paid in the various districts of the Province on the dates noted below:—

For malguzari and zamindari villages.

	Frist kist.	*Second kist.*
Jubbulpore Division—		
Jubbulpore, Saugor and Damoh, ...	15th January.	15th May.
Mandla ...	Do.	1st June.
Seoni ...	1st February.	Do.
Nerbudda Division—		
Narsingpur, Chhindwara and Nimar.	1st February.	15th May.
Betul ...	Do.	1st June.
Hoshangabad ...	15th January.	15th May.
Nagpur Division—		
Nagpur and Wardha ...	10th February.	1st May.
Balaghat ...	Do.	15th May.
Chanda District—		
Warora Tahsil ...	10th February.	1st May.
Other Tahsils ...	Do.	15th May.
Bhandara District—		
Bhandara Tahsil ...	10th February.	1st May.
Other Tahsils. ...	Do.	15th May.
Chhattisgarh Division—		
Raipur and Bilaspur ...	15th February.	15th May.
Sambalpur ...	Do.	1st May.

For regularly settled raiyatwari villages.

One month prior to the date fixed for the payment of each kist of land revenue in malguzari villages in the same district.

II.—The instalments shall be those laid down in the settlement records.

III.—All payments shall ordinarily be made at the head-quarters of the tahsil to the Tahsildar or to such subordinate Officer as he, with the sanction of the Deputy Commissioner, may appoint to receive it. They may, however, if the payer finds it more convenient, be made direct into the Sadar Treasury to the Officer in charge of that treasury.

IV.—The revenue payable by malik-makbuzas to malguzars shall be paid one month before the date on which the corresponding instalment of land-revenue is due to Government.

" Arrear Defaulters."

91. When any sum payable under a settlement or sub-settlement [or otherwise under an assessment made in accordance with this Act] is not paid within the time at which it is payable under section 90, such sum shall be deemed to be an arrear, and all the persons with whom such settlement or sub-settlement (or such assessment) was made, their representatives and assigns, shall thereupon become jointly and severally liable for it, and shall be deemed to be defaulters within the meaning of this Act.

Note.—Moreover, section 91 does not make assigns personally liable for an arrear which has accrued prior to their assignment. The section merely provides that when any sum payable under a settlement or sub-settlement is in arrear the persons with whom such settlement or sub-settlement was made, their representatives and assigns shall, thereupon, (not thereupon and thereafter) become jointly and severally liable for it. (C. P. L. R. XI. at Page 114 Balaji Sonar vs. Govinda and Dhansingh.)

Explanation.—The term " assigns " in this section includes a mortgagee in possession and a thekadar.

Avoidance of attachment and executions which forestall land-revenue.

91-A. Without the previous consent of the Deputy Commissioner or of such officer, not being below the rank of Tahsildar, as he may appoint in this behalf, the rents and profits of a mahal or malik-makbuza holding and the produce of a survey-number shall not be liable to be attached or taken in execution of a decree or order of any Court until the land-revenue chargeable against such rents, profits or produce, and any arrear due in respect of the mahal, holding or survey-numder, have been paid.

Note.—Section 91-A enables the Deputy Commissioner to ensure that the rents and profits of a mahal or malik-makbuza holding, and the produce of a survey-number, are not attached by creditors so long as land-revenue is due on the mahal, holding or survey-number. The law already existing made the land-revenue the first charge on the land in the case of transferable property, but it did not enable the Deputy Commissioner to recover it from rents and profits which were attached by creditors. The defect has been remedied, and the inclusion of the produce of a survey-number also within the scope of the section should greatly facilitate the prompt collection of land revenue in ryotwari villages. (C. P. Revenue Manual Vol. I P. 82)

Realization of Revenue from Malguzars.

Tahsildar's statement of account to be conclusive evidence of arrear.

92. A statement of account, authenticated by the signature of the Tahsildar shall, for the purposes of this chapter, be conclusive evidence of the existence of any arrear payable direct to the Government, of its amount, and of the persons who in respect thereof are defaulters.

Notice of demand.

93. The Deputy Commissioner or any Officer empowered by him in this behalf may, if the thinks fit, before any of the processes hereinafter referred to are issued for the recovery for such an arrear, cause a notice of demand to be served on any of the defaulters.

Processes for recovery of arrears.

94. An arrear payable directly to Government may be recovered by any one or more of the following processes:—

(*a*) by arresting the defaulter and imprisoning him in the civil jail;

(*b*) by attaching and selling his moveable property;

(*c*) by attaching the mahal in respect of which the arrear has accrued or the share or land of any malguzar who has not paid the portion of the revenue which, as between him and the other malguzars, is payable by him, and taking the same mahal, share or land under direct management;

(*d*) by transferring the share or land of any malguzar who has not paid such portion to any malguzar who has paid the same, or, if every such malguzar declines to accept such share or land, to any person having a mortgage or charge upon the same, and who consents to accept it;

(*e*) by annulling the settlement of the mahal in respect of which the arear has accrued, and taking such mahal under direct management or farming the same;

(*f*) by selling such mahal, or the share or land of any malguzar who has not paid the portion of the revenue aforesaid;

(*g*) by selling immoveable property belonging to the defaulter other than the land in respect of which the arrear has accrued;

(*h*) in the case of a ryot who has accepted the assessment of a survey-number, by ejecting him from his holding:

Provided as follows:—

(1) the process mentioned in clause (*a*) shall not be issued against any female, minor, lunatic or idiot;

(2) the processes mentioned in clauses (*d*), (*e*) (*f*) and (*g*) shall not be enforced without the previous sanction of the Chief Commissioner;

(3) no land shall be sold, and the settlement of no land shall be annulled, on account of an arrear accruing in respect of land whilst it is under attachment, or under charge of the Superintendent of Government Wards, or held under direct management, or let in farm in accordance with any of the provisions of this Act.

The processes specified in clauses (*a*), (*b*) and (*c*) may be enforced either in the district in which the default has been made, or any other district.

Note.—For general instructions regarding the recovery, collection and account of land-revenue payable to Government, see Revenue Book Circular Vol. II. Section 1, serial No. 1

2. *The following instructions have been issued for the guidance of Officers in submitting proposals for the sale of villages or shares of villages for the recovery of arrears of Land Revenue:—*

From cases that have recently come before him, the Chief Commissioner sees reason to doubt whether officers, when proposing the sale of land for the recovery of arrears of land revenue, have always sufficiently realized the serious consequences of such a step to the defaulter, and the grave responsibility that rests upon them in suggesting such a course. In several recent cases it has been literally thought sufficient to report that so many rupees of land revenue are in arrears, and that other processes for its recovery have failed, and to ask for sanction to the sale of the defaulter's share as a matter of course.

2. In prosperous times, when arrears were hardly known and such proposals were extremely rare, this procedure was perhaps open to but little objection; for the presumption was strong that default was due to the defaulter's own *laches*. But after the serious failure of crops that has recently occurred in almost every district of the Province, special care must be taken, before enforcing the extreme penalty of the permanent loss of an ancestral estate, to make sure that Government is acting justly in insisting on the immediate payment of the arrear.

3. Before making a proposal for the sale of land for the recovery of land revenue, the Deputy Commissiner must, therefore, carefully examine the circumstances which have led up to the default. He should compare the assets on which the current assessment was based with those of the present time, and should examine the details of cropped arears in the village, and consider whether, on the facts thus brought to light, there has been any such deterioration as would justify leniency. He should ascertain how far rents have been paid by the tenants, and whether, having regard to the nature of the crops, the malguzar has collected as much as was possible, or whether he is himself in any way responsible for the short collections.

4. If after taking into account all these circumstances, the Deputy Commissioner is of opinion that the default is due to the malguzar's own extravagance, neglect, or dishonesty, he should first consider whether milder measures than sale would not secure the

recovery of the arrear, such as a temporary transfer to a shareholder who has paid his share of the revenue (Section 94 (*d*)) or direct management on farm [Section 94 (*c*) and (*e*)].

If the estate is so encumbered that no one can be found willing to accept such transfer or farm, the Deputy Commissioner should consider whether there is any hope of the owner ultimately redeeming his estate. If there is, an attempt should be made with the consent of the parties not only to recover the arrears of revenue but also to liquidate the debts by a lease. If this is impossible, sale free of all encumbrances, by which the defaulter retains an occupancy right in his sir land, may be of advantage both to Government and the defaulter.

5. It must, however, be remembered that the final responsibility in ordering sale of land for arrears of revenue rests upon the Chief Commissioner: and it is therefore essential, in order to enable him to discharge it, that, in addition to the facts required by paragraph XXI of Notification No. 5141 of 19th November 1894, issued under Section 113 of the Land Revenue Act, the Deputy Commissioner's report should clearly show that the proposed sale is justified and unavoidable and that the default is not caused by temporary deterioration due to bad seasons. In submitting their report, Deputy Commissioners must, therefore, include a statement of the results of their enquiries under paragraphs 3 and 4 of this circular.

6. To add definiteness to this report it should be accompanied by the form appended to this circular fully filled in as directed. When it is proposed to sell the share of a co-sharer who is not the lambardar or sub-lambardar, the Deputy Commissioner must further ascertain and report the area of the sir and khudkhast land in the possession of each co-sharer, the extant to which the other co-sharers have paid the land revenue demand on the village, and why it is proposed to proceed only against a single co-sharer, and not against the lambardar or whole body of proprietors. The area of the sir and khudkhast land in the possession of each co-sharer can be taken from the last jamabandi which has been filed at the Tahsili, unless there is reason to suppose that changes have subsequently taken place. (see R. B. C. Vol. II. S. 1 Serial No. 12).

Name of village.——————

Year to which figures relate.	Total area cropped	Area of *sir* and *khud-kast*	Rental.	Rent collected	Revenue demand.	Revenue collections	Arrears.	Encumbrances (if any)	Remarks.
1	2	3	4	5	6	7	8	9	10
	Acres.	Acres.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	
A ...	...	...	...	...	...	...	...	...	
B ...	...	...	...	...	...	...	...	...	
C ...	..	...	...	...	...	...	...	...	
D, &c. ...	...	...	...	...	...	...	...	...	

A on which the assessment, as announced, was based.

B, C, D, &c., for each year in which an arrear has accrued.

Directions.—I. The figures to be filled in against side-head A, *i. e.*, the figures on which assessment, as announced, was based should be abstracted from the Settlement record as follows:—

For Column 2, fron Mahalwar Assessment Statement Table V, Column 2, side-head 1.
Do. 3, do. do. do. VI, do. 4,
Do. 4, do. do. do. VII, do. 6, do. 5, subject to any alteration made at announcement, the existence of which may be discovered by comparing Column 2 of Table X below, in which the announced rental will be found.

For Column 6, from Mahalwar Assessment Statement Table XI, Column 2.

The remaining columns need not be filled in opposite A.

2. The figures to be filled in against side-heads B, C, D, &c., *i. e.*, for each year in which an arrear has accrued, should be abstracted as follows:—

Column 2, from village Register A (Milan Khasra) Column 2 (R. B. C. III–3, P. 90)
Do. 3, Do. Do. C (Jamabandi Abstract) Column 4 and 5 (R. B. C. 3, P. 93)
Do. 4, Do. Do. C (do.) Columns 25 (R. B. C. 3, P. 93)
Do. 5, Do. Do. C (do.) Columns 26 and 27 (R. B. C. 3, P. 93)
Columns 6, 7 and 8, Khatoni Form A—3. (R. B. C. I-1, P. 25)

3.—*The following instructions have been issued by the Chief Commissioner Central Provinces for the collection of revenue in Pattidari Villages:—*

Under the pattidari system the village has been privately partitioned among the various co-sharers, and each such co-sharer is the landlord of certain tenants. Under the provisions of the Tenancy Act each pattidar is thus entitled to collect the rents of his patti and it is impossible in any way to insist that rents in such villages shall be paid only to the lambardar.

2. The lambardar is, however, the village-officer appointed by Government to represent the whole proprietary body in its relations with the Government, and all pattidars are responsible to him for the payment of land revenue and should pay their contributions towards the Land Revenue of the whole village to him for credit in the Government Treasury. As the lambardar is thus by his position responsible to Government for the whole revenue of the village, he should, whenever it is necessary, receive support from the Deputy Commissioner against any pattidars who refuse to pay their share of the land revenue to him. Such support can be given by the use of Section 116, Land Revenue Act, which permits the Deputy Commissioner to recover an arrear of revenue from a co-sharer for the lambardar by a summary process, and while care should be taken that this section is not abused, more recourse should be had to it than has been the custom in the past.

3. When the Deputy Commissioner has decided to take action under this section, the Tahasildar should be told that the issue of processes and notices to the lambardar, unless specially ordered by the Deputy Commissioner, should cease and every effort should be made to recover the revenue from the pattidar in fault. In extreme cases, if other measures fail, the provisions of section 94 (*d*) of the Land Revenue Act should be used, and proposal submtited for the temporary transfer of the patti of the defaulter to the lambardar. (see R. B. C. Vol. II. S. 1 Serial No. 13)

Arrest and imprisonment for recovery of arrear.

95. The process mentioned in section 94, clause (*a*), may be executed by issuing a warrant directing the officer named therein, if the defaulter fails to pay the arrear by a date to be fixed in the warrant, to bring him to the tahsil

If, when the defaulter arrives at the tahsil, the arrear is still unpaid, the Tahsildar may order him to be taken before the Deputy Commissioner, or may keep him under personal restraint at the tahsil for a period not exceeding ten days, unless within such period the arrear is paid, and may then, if the arrear is still unpaid, cause him to be taken before the Deputy Commissioner.

Imprisonment of defaulter in civil jail.

96. If the arrear is not paid when the defaulter arrives before the Deputy Commissioner, the Deputy Commissioner may issue an order to the officer in charge of the civil jail of the district, directing him to confine the defaulter in such jail, for such period, not exceeding three months from the date of the order, as the Deputy Commissioner may think fit, unless within such period the arrear is paid.

Procedure in sales of moveable property.

97. Attachments and sales of moveable property made under this chapter shall be conducted as nearly as may be according to the law for the time being in force for the attachment and sale of moveable property under the decree of a Civil Court.

Note.—For attachment of moveable property see Sections 268 to 273 of the Code of Civil Procedure.

Management of mahal share or land attached under section 94 (c)

98. After causing any attachment to be made under section 94, clause [c] the Deputy Commissioner shall issue a proclamation declaring the attachment to be in force, and shall take the attached mahal, share or land under his own management, or place it under the management of any agent whom he may appoint for the purpose.

Effect of attachment.

99. During the continuance of an attachment under section 98, the defaulters shall be excluded from possession of the land attached, and the Deputy Commissioner or the agent appointed by him shall have all their rights to manage the land and to realize rents and profits arising therefrom, and shall be bound by all their liabilities as malguzars or proprietors to any subordinate proprietors or tenants of such land.

Profits of land how applied.

100. The surplus profits of such lands, after defraying the cost of attachment and management, shall be applied, first, to the payment of any revenue becoming due in respect of such land during the attachment, and next, to discharging the arrear for the recovery of which the attachment was made.

Attachment when to cease.

101. The attachment shall continue until the arrear is paid or realized from the profits of the land attached, or the Deputy Commissioner reinstates the defaulters in possession:

Provided that no attachment shall continue beyond five years from the first day of the agricultural year next following its commencement.

Transfer under Section 94 (d)

102. When it is proposed to execute the process mentioned in section 94, clause (*d*), the persons to whom the share or land in respect of which the arrear is due is to be transferred shall be required to pay such arrear, or to secure its payment to the satisfaction of the Deputy Commissioner.

No such transfer shall be made for a term exceeding fifteen years from the first day of the agricultural year next after the date on which it is sanctioned by the Chief Commissioner.

Joint and several liability not affected by transfer.

No proceedings taken under this section shall affect the joint and several liability of the malguzars of the mahal for arrears accruing in respect of such mahal subsequently to the transfer of the share or land, except that, as regards all such arrears, the transferee shall stand in the place of the malguzar whose share or land is transferred.

Procedure after receipt of sanction to annulment of settlement.

103. When the Chief Commissioner sanctions the annulment of the settlement of any mahal, the Deputy Commissioner shall proclaim such annulment, and may then exclude the defaulters from the possession of the mahal, and either manage the mahal or any portion thereof himself or through an agent, or let the mahal or any portion thereof in farm for such term and on such conditions as the Chief Commissioner directs:

Provided that no management or farm under this section shall continue for a longer period than fifteen years from the first day of the agricultural year next after the proclamation of annulment of settlement.

After the date of such proclamation no liabilities shall accrue under the settlement so annulled; but such annulment shall not affect anything done or any liability incurred under the settlement before such date.

Case of a portion of a mahal being managed or farmed.

104. When a portion only of the mahal is managed or let in farm under section 103, the rest of such mahal shall be separately re-settled with the proprietors thereof for the remainder of the term of settlement.

Settlement of expiry of management or farm.

105. As soon as the management or farm of any mahal or portion thereof has come to an end, the Deputy Commissioner shall offer to the persons entitled under section 49 to an offer of assessment a new assessment of the land, on such conditions as the Chief Commissioner may direct, for the remainder of the term of the settlement of the mahal; and, if such offer is refused, may, with the previous sanction of the Chief Commissioner, let such mahal or portion in farm for the remainder of the term of settlement to some other person, or manage it himself or through an agent for such period.

Effect of annulment of settlement.

106. No leases, liens or other incumbrances created by the defaulters, or by any person through or under whom they claim, of or upon any land managed or let

in farm under this Act, shall, during such management or farm, be binding upon the Deputy Commissioner or Settlement Officer, his agent or lessee.

Saving of rights in sir-land.

107. No defaulter shall be deprived of the possession of his sir-land in the execution of any of the processes mentioned in section 94, clauses (*c*), (*d*) and (*e*); but every such defaulter shall, while such process is being enforced, be entitled to retain possession of, and liable to pay rent for, such land as if he were an absolute-occupancy tenant, at such rent as may be fixed by the Deputy Commissioner.

Nature of estate taken by purchaser of land sold for arrears due thereon.

108. Unless the Chief Commissioner in sanctioning the sale otherwise directs, a purchaser of any land sold for arrears of revenue due in respect thereof acquires the full proprietorship or superior or inferior proprietorship of it, as the case may be, free of all leases, liens and other incumbrances; and all grants or contracts previously made by any person other than the purchaser in respect of such land shall become void as against such purchaser.

Nothing in this section shall—

(*a*) affect the rights of any proprietor, superior or inferior to the defaulters, or of any malik-makbuza or occupancy-tenant, who does not derive his rights as such proprietor, malik-makbuza or tenant from express contract with such defaulters, or any person through whom they claim; or

(*b*) apply to lands held under leases at fair rents for the erection thereon of dwelling-houses, places of worship or manufactories, or for working mines, minerals, coals and quarries, or for laying out and maintaining gardens and burial-grounds, or for constructing tanks and canals, so long as the lands continue to be used for the purposes specified in such leases respectively; or

(*c*) deprive any defaulter whose property is sold of the rights in respect to his sir-land conferred by any law for the time being in force.

The Chief Commissioner may, from time to time, determine what rents shall be deemed to be fair rents within the meaning of this section.

Rules for sale of immoveable property.

109. When immoveable property is sold under this Act, the rules prescribed in sections 287, 288, 293 and 306 to 316, both inclusive, of the Code of Civil Procedure shall be followed, except in the following particulars (that is to say):—

(*a*) the defaulter may pay the arrear in respect of which the land is to be sold at any time before the day fixed for the sale, and on such payment the sale shall be stayed;

(*b*) the proclamation directed by the said section 287 shall, when the sale is under clause (*f*), section 94, of this Act, declare that, subject to the provisions of section 108, the full proprietorship, or superior or inferior proprietorship, as the case may be, is to be sold free from all leases, liens and other incumbrances, and the certificate mentioned in section 316 of the said Code shall contain a similar statement;

(*c*) the last two clauses of the said section 287 shall not apply;

(*d*) an appeal from any order under section 312 of the said Code for confirming or setting aside the sale shall lie to the Commissioner of the Division, and an appeal from the Commissioner's order on such appeal shall lie to the Chief Commissioner;

(*e*) the Deputy Commissioner may, from time to time, postpone any sale which he has proclaimed, reporting such postponement to the Commissioner of the Division;

(*f*) section 309 of the said Code shall be read as if after the words "for such payment" the words "and every sale of such property made after a postponement" were added;

(*g*) section 313 of the said Code shall not apply to sales under section 94, clause [*f*], of this Act;

(*h*) section 316 of the said Code shall be read as if the words "The Deputy Commissioner shall place the purchaser in possession of the lands which he has purchased" were added thereto.

Pre-emption at sales.

110. In the course of a sale under section 94, clause [*f*], if the property is knocked down to a stranger, the following persons may claim to take it at the sum last bid in the following order:—

(*a*) any malguzar who has paid the revenue which, as between him and the other malguzars, is payable by him;

(*b*) if the superior proprietorship is sold, the inferior proprietor;

(*c*) if the inferior proprietorship is sold, the superior proprietor:

Provided that such claim is made before the officer conducting the sale closes the sitting at which the sale is held, and that the claimant undertakes to fulfil all the conditions of the sale binding on the purchaser.

Application of proceeds of sales of immoveable property.

111. The proceeds of every sale in execution of any process mentioned in section 94 shall be applied, first, in satisfaction of the arrear on account of which the sale was held and of the expenses of such sale; secondly, to the payment of any other arrear due to Government by the defaulter; and the surplus, if any, shall then be payable to him, or, where there are more

defaulters than one, to such defaulters according to their respective shares in the property sold.

Costs recoverable as part of arrear.

112. The costs of serving a notice of demand under section 93 and of enforcing any process mentioned in section 94 shall be recoverable as part of the arrear in respect of which the notice was served and the process was issued.

Matters as to which Chief Commissioner may make rules.

113. The Chief Commissioner may make rules—

(*a*) for the guidance of Revenue Officers in issuing notices of demand under section 93 and executing the processes mentioned in section 94;

(*b*) defining the classes of officers by whom the processes mentioned in section 94, clauses (*a*) and (*b*), may be enforced;

(*c*) prescribing the agency by which any of the processes issued under section 94 shall be executed.

Note—The Chief Commissioner has made the following rules under this section:—

A.—Notices of demand.

Notification No 5141 of 19 th November 1894 as amended by Notification No.

I.—A notice of demand may be issued whenever there is reason to believe that its issue will secure the payment of the arrear. In no case shall a notice of demand be issued with the object of punishing or fining a defaulter.

II.—No notice of demand shall issue until an arrear has actually

1236, dated the 22nd September 1899. accrued, that is to say, until the day succeeding that on which the demand was payable.

III.—When there are more defaulters than one in a mahal, a single notice of demand may be issued against the whole collectively; and when the same person is a defaulter is respect of more than one mahal, a single notice of demand may issue for the amount due on those mahals, provided that they are situated within the same tahsil.

IV.—Notices of demand shall issue in duplicate in the following form, and shall be signed by the officer issuing them:—

Serial No.	Mahal.	Date of issue.	Amount of instalment.	Paid.	Unpaid.	Process fees.	Total due. Total of Column 6, and 7.	Name of server.	Date of service.	Date of server's return.
1	2	3	4	5	6	7	8	9	10	11

The provisions with regard to the service of summons contained in the Code of Civil Procedure shall apply as far as may be to the service of notice under this rule.

V.—The serving officer shall enter the date and particulars of the mode of service on the copy of the notice which is retained by him. This copy shall then be returned to the officer who issued it, and shall be filed for record.

VI.—A notice of demand may, in the discretion of the officer issuing it, be sent by registered letter, in which case it need not be sent in duplicate, and columns 9, 10 and 11 of the notice will be left blank.

VII.—Notices of demand issued by an officer other than the Tahsildar or Naib-Tahsildar of the tahsil in which the land in respect of which the arrear accrued is situated, shall, unless they are sent by post, be forwarded for service to that Tahsildar.

VIII.—The fee charged for a notice of demand shall be 6 annas if sent by post and 12 annas if sent by a server or chaprasi. This fee shall, at the time of issue of the notice from the tahsil, be added to the original arrear by special entry both in column 7 of the notice of demand and in the tahsil khatoni of land-revenue demands and receipts.

If an arrear be paid into the treasury after the notice of demand concerning it has been filled up, but before it has been actually issued from the tahsil for service, the notice shall be cancelled and no charge made.

IX.—Servers and Revenue chaprasis employed in serving notices of demand are prohibited from receiving any arrear of Government revenue for the purpose of paying it into the tahsil and from collecting any fees for the issue of notices.

B.—*Class of officers by whom processes may be issued.*

X.—All processes for the arrest of defaulters or for the attachment or sale of their moveable property shall be issued by the Deputy Commissioner or by an Assistant Commissioner specially empowered in this behalf by the Chief Commissioner.

The Deputy Commissioner may delegate the power of issuing a warrant of arrest or attachment of moveable property to a Tahsildar, provided that no defaulter shall be confined in the Civil Jail and no property brought to sale without the previous sanction of the Deputy Commissioner.

C.—*Arrest and imprisonment* [*Section 94* (*a*)].

XI.—Although in case of default all and each of the co-sharers in a mahal are jointly and severally responsible, the process mentioned in section 94 (*a*) and section 95 shall ordinarily be enforced on against the Lambardars, unless there are reasonable grounds for b lieving that any other sharer in the mahal is an actual defaulter in hi own person, that is to say, has not paid his share of the land reven and has appropriated the rents or produce from which the share shou have been paid.

XII.—Every warrant of arrest shall be in Form I appended.

XIII.—All orders passed by the Tahsildar regarding the disposal of the defaulter after his arrival at the tahsil shall be recorded on the back of the warrant or on a paper attached to it.

XIV.—A defaulter under arrest shall be released if he gives adequate security for the payment of the arrears within such time as the Thasildar, or if he has been forwarded from the tahsil, the Deputy Commissioner, or Assistant Commissioner specially empowered under rules issued under section 113 (*d*) of the Central Provinces Land-revenue Act, may fix.

XV.—An order of imprisonment under section 96 shall be in Form II appended. Subsistence money shall be allowed at the rate for the time being in force for civil debtors.

D.—Attachment and sale of moveable property [Section 94 (b)].

XVI.—The provisions of Rule XII shall apply to the attachment and sale of moveable property.

E.—Attachment of mahal or share of mahal [Section 94 (c)].

XVII.—When a mahal or share is ordered to be attached unde section 94 (*c*) proclamation shall issue in Form III hereunt appended.

F.—Annulment of settlement [Section 94 (c)].

XVIII.—When it has been decided to annul the settlement of mahal, a proclamation shall issue in Form IV hereunto appended.

XIX.—When a mahal the settlement of which has been annulle is let on farm, the engagement of the farmer shall, unless the Chie Commissioner shall otherwise direct, be in From VII appended. Any modifications of, or additions to, the provisions specified in this form which may in particular cases be deemed necessary, shall be submitte to the Chief Commissioner for his approval.

G.—Sale of a mahal for arrears of revenue due thereon [Section 94 (f)].

XX.—When a Deputy Commissioner decides to apply to th Chief Commissioner for permission to sell a mahal for arrears of revenu due thereon, he shall, before submitting his application, make enquir regarding the matters mentioned in clauses (*a*), (*b*), (*c*) of sectio 108, and shall include the result of his enquiry in his application.

XXI.—When sanction to sale has been received, a proclamatio shall issue in Form V appended.

XXII.—All sales shall be by public auction.

H.—Sale of immoveable property other than that on whic an arrear has accrued [Section 94 (g)]

XXIII.—When a Deputy Commissioner proposes to resort t the process specified in section 94 (*g*), he shall, in the first instance apply to the Chief Commissioner for leave to sell the immoveabl property against which he intends to proceed, and shall in his application give such information as he has been able to obtain regardin the interest of the defaulter therein, the incumbrances, if any thereon and the sum likely to be realized by sale.

XXIV.—Having received sanctian, the Deputy Commissioner shall if sale is to be enforced, issue a proclamation in Form VI hereunt appended.

XXV.—If after he has received sanction to sell, the Deputy Commissioner obtains information whether through objections to the attachment or otherwise, which ought, in his opinion, to be submitted to the Chief Commissioner, he shall make a further report, postponing sale if necessary.

XXVI.—If the immoveable property to be proceeded against under section 94 (*g*) lies in a district other than that in which the arrear accrued, the Deputy Commissioner of that district shall issue process on the motion of the Deputy Commissioner of the district in which the arrear accrued.

1.—*General.*

XXVII.—All references or applications made under these rules to the Chief Commissioner shall be made by the Deputy Commissioner through the Commissioner, who shall submit them after such further inquiry, if any, as he may think fit to direct.

XXVIII.—All processes issued under Chapter VIII shall be executed as far as possible by the fixed establishment of Revenue chaprasis attached to the tahsil. But on occasions of pressure, the number of such chaprasis may be supplemented by the temporary appointment of extra peons in such numbers and for such periods as may be necessary, under the Deputy Commissioner's orders, at any time within such periods of the year, not exceeding 6 months in all, as the Commissioner may prescribe for each tahsil, and at other times with the Commissioner's sanction.

FORM—I.

Warrant for arrest of revenue defaulter.

From

The Deputy Commissioner [or other officer empowered under section 123 (1)].

To

[Name and office of the person charged with execution of the warrant]

On account of (descriptive entries of mahal, share, or land)
For kist payable on the 190
Amount payable ... Rs.——
„ paid ... „ ——
„ balance ... „ ——
Add costs ... „ ——
Total to be recovered... „ ——

Whereas——,son of——, caste———,resident of———, has made default in payment of Rs. , on account of land-revenue, due by him as per margin.

Unless he shall satisfy the above claim on or before—————— ————you are to arrest and take him to the tahsil office at——there to be dealt with according to law.

Given under my hand and the seal of this office, this————day of————190.

Deputy Commissioner.

FORM.—II.

Warrant to confine revenue defaulter in Civil Jail at—

From

The Deputy Commissioner (or Assistant Commissioner specially empowered).

To

The Officer in charge of the Civil Jail at————

Whereas——————, son of—————, caste,—————— ——————resident of——————, has been arrested for default in payment of the sum of Rs.——————————being arrears of land-revenue due by him together with costs;

And whereas the said——————has been brought before me and has not paid the above sum (*or* has paid Rs.—————— ————and the sum of Rs.——————is still due).

You are hereby directed to receive the said——————— into the Civil Jail of this district and to confine him there for a period of——————unless the above sum be paid to you within that period, or the imprisonment be stayed by order from this office.

The allowance for subsistence of the defaulter during his imprisonment has been fixed at the rate of Rs.——————a month.

Deputy Commissioner

FORM.—III.

Proclamation of attachment of mahal, share or land for recovery of arrears of land-revenue under section 94 (c) of the Land-revenue Act.

Whereas the mahal described in the following schedule has been attached under section 94 of the Central Provinces Land-revenue Act, 1881, for the recovery of Rs.——————, on account of land-revenue and costs due from the defaulters named in the schedule;

Proclamation is hereby made that, during continuance of the attachment, these defaulters are, under section 99 of the aforesaid Act, excluded from the possession of the mahal, and the agent appointed by the Deputy Commissioner shall have all their rights to manage the mahal and to realize the rents and profits arising therefrom, and shall be bound by all their liabilities as malguzars or proprietors to any subordinate proprietors or tenants in such mahal.

Also under section 156 of the same Act, all sums due to the defaulters in respect of the attached mahal are now payable only to the Deputy Commissioner or his Agent. No payment made before this attachment to the defaulters in anticipation of the usual period for such payment shall, without the sanction of the Deputy Commissioner, be credited to the person making the same in account with the Deputy

Commissioner or his agent.

Issued under my hand and the seal of this office this——— ———day of ———190 .

Deputy Commissioner.

SCHEDULE.

Tahsil.	Mahal.			Name, father's name and caste of each defaulter.	Share in the mahal or other description of the attached land of each defaulter.
	No.	Name.	Annual Government demand.		

FORM.—IV.

Proclamation of annulment of settlement.

Proclamation is hereby made that, with the sanction of the Chief Commissioner, the settlement of the mahal described in the following schedule, is annulled on account of arrears of land-revenue due thereon. The annulment will have effect from the———————

Notice is hereby given that all sums due to proprietors are now payable only to the Deputy Commissioner or his agent or lessee.

Issued under my hand and the seal of this office this——— ———day of——————190 .

Deputy Commissioner.

SCHEDULE.

Tahsil.	Mahal.			Name, father's name, caste, and share of each defaulter.
	No.	Name.	Annual Government demand under the settlement annulled.	

FORM.—V.

Proclamation of sale of land for arrears of revenue due in respect thereof.

Whereas the Chief Commissioner has sanctioned sale of the property described in the following schedule for recovery of Rs.——, being arrears of land-revenue due in respect thereof, plus costs;

Proclamation is hereby made that, unless the arrear be paid before the day herein fixed for sale or the sale be postponed by the Deputy Commissioner, the said property will be sold by public auction at the office of the Deputy Commissioner at————on the————day of————190 , at or about————o'clock.

Subject to the provisions of section 108 of the Central Provinces Land-revenue Act, the————proprietorship of the said land is to be sold free of all liens, leases and incumbrances, and all grants or contracts previously made by any person other than the purchaser in respect of such land shall become void as against the purchaser.

Issued under my hand and the seal of this office this———— day of————190 .

Deputy Commissioner.

SCHEDULE.

Tahsil.	MAHAL.			Property exempt under section 108 so far as known.	Other property specially exempted by Chief Commissioner under the same section.
	No.	Name and description.	Annual jama.		

FORM.—VI.

Proclamation of sale of land for arrears of revenue due on other land in the property of the same owner.

Whereas the Chief Commissioner has sanctioned sale of the property described in the following schedule for the recovery of the sum of Rs.——,being arrears of land-revenue due in respect of mahal ——from——,son of——,caste——, plus Rs.——,on account of costs;

Proclamation is hereby made that unless the arrear be paid before the day herein fixed for sale, or the sale be postponed by the Deputy Commissioner, the said property will be sold by public auction at the office of the Deputy Commissioner at——on the——day of——190 ,at or about——o'clock.

The said——is hereby prohibited from transferring or changing the said property in any way, and all persons are in like manner prohibited from receiving the same from him by purchase, gift or otherwise.

The sale extends only to the right, title and interest of the said——in the property described, and the purchaser will take, subject to any incumbrances to which the estate is liable, existing incumbrances so far as known, as stated in the schedule.

Issued under my hand and the seal of this office this——day of——190 .

Deputy Commissioner.

SCHEDULE.

Tahsil.	MAHAL.			Note of any known lien, lease or other incumbrance upon the property.
	No.	Name and description.	Annual jama.	

FORM.—VII.

Whereas the Chief Commissioner of the Central Provinces has under section 94 (*e*) of the Land-revenue Act, 1881, sanctioned the leasing of the mahal described in Schedule A hereto appended, for the recovery of Rs.————————, being arrears of land-revenue, cesses, additional rates and costs due from the defaulter named in the said schedule, and whereas————————————————, son of————————————, of mauzah————————————, in the————————tahsil of the————————————district, has, in consideration of obtaining a lease of the said mahal for a term of————years, paid the arrears aforesaid;

Be it known that a lease of the said mahal is hereby given to the said———————————— (hereinafter called the lessee) for the term of————years from the————day of————19 , subject to the conditions and reservations, but with the powers and authorities, as follows:—

(1) that the lessee shall regularly pay to the Deputy Commissioner of the————————District all sums due to the Government on account of land-revenue, cesses and additional rates, *viz.*, on the 10th February Rs.————. and on the 15th May Rs.————in each year;

(2) that the lessee shall give proper security for the punctual payment of the land-revenue, cesses and additional rates assessed on the mahal and for the fulfilment of the conditions of this lease; and that the Deputy Commissioner shall from time to time beat liberty to revise the security given by the lessee, and to call for fresh security should he consider that the security originally given is insufficient;

(3) that the lessee shall leave the Malguzar————————in possession of the sir-lands described in Schedule B hereto appended, taking from him in respect thereof only such rent as may be fixed by the Deputy Commissioner under section 107 of the Central Provinces Land-revenue Act, 1881;

(4) that the lessee shall himself or through his agents or servants cultivate the *khudkasht* land described in Schedule C, hereto appended;

(5) that the lessee shall not assign, sublet or otherwise part with the rights conferred by this lease in respect of the said mahal or any part thereof without the permission of the Deputy Commissioner;

6) that nothing inconsistent with good husbandry shall be done by, or with the connivance of, the lessee, and that he shall be liable to damages for any deterioration or injury to the mahal arising from a breach of this condition;

(7) that the lessee be bound by all the provisions of the *wajib-ul-arz* prepared for the said mahal;

(8) that the lessee shall in respect of the said mahal exercise all the powers conferred, and be responsible for the performance of all the duties imposed upon lambardars and mukaddams by the Central Provinces Land-revenue Act, 1881 (as amended by Act XVI of 1889), and by the rules made thereunder, and shall further be entitled to realize from the tenants all arrears of rent outstanding and lawfully realizable on the said day of————19 ;

(9) that the lessee shall on the expiry of the said term of————years peacefully yield up the said mahal to the Deputy Commissioner or to such person as he may appoint in this behalf;

(10) that the lessee shall not be entitled to any compensation or payment for any erections, buildings or fixtures erected or placed by him in the said mahal, or in respect of any improvements for agricultural purposes effected by him therein;

(11) that on the death of the lessee this lease shall be voidable from the commencement of the agricultural year next following, and that, if it be declared void, any sub-leases which may have been granted by the lessee shall also be voidable; also that if the Deputy Commissioner elect to continue the lease to the heirs of the deceased lessee or to one of more of them, fresh security for the punctual payment of the revenue and fulfilment of the conditions of the lease shall be given.

In witness whereof the Deputy Commissioner of the———— District and the said————have hereunto set their respective hands this————day of————19 . A. D.

SCHEDULE A.

Tahsil.	Number of village.	Name.	ANNUAL GOVERNMENT DEMAND.					PRESENT HOLDER.				Share in the Mahal.	Remarks.
			Land-revenue.	Cesses.	Additional rates.	Patwari cess.	Total.	Name.	Father's name.	Caste.	Residence.		
1	2	3	4	5	6	7	8	9	10	11	12	13	14

SCHEDULE B.

Tahsil.	Number of village.	Name.	Sir-Fields.			Remarks.
			Number.	Area.	Jama.	
1	2	3	4	5	6	7

SCHEDULE C.

Tahsil.	Number of village.	Name.	Khudkast-Fields.			Remarks.
			Number.	Area.	Jama.	
1	2	3	4	5	6	7

Remedies open to person denying that sum demanded as an arrear is due.

114. Notwithstanding anything contained in section 92, when proceedings are taken under this Act for the recovery of an arrear, the person against whom such proceedings are taken may, if he denies that the arrear or any part thereof is due, pay the same under protest made at the time of payment and duly signed by him or by his agent, and institute a suit in the Civil Court for the recovery of the amount which he denies to be due.

Realisation of Revenue by Malguzars.

Limitation of right to set off, &c., in suit for arrears.

115. In a suit for the recovery of an arrear of revenue not being revenue payable directly to Government, and in a suit brought by a lambardar to recover the amount of any revenue payable to Goverment through him, the defendant shall not, except with the permission of the Court,—

(*a*) set off against the plaintiff's demand any sum of money recoverable by him from the plaintiff; or

(*b*) claim credit for any payment purporting to have been made on account when such payment was made before the date on which the amount thereof became due.

Recovery of arrear through Deputy commissioner instead of by suit.

116. Any lambardar or sub-lambardar entitled to recover an arrear, or any malguzar to whom such an arrear is due under a sub-settlement, may, before instituting a suit for the recovery thereof, apply to the

Deputy Commissioner to recover such arrear on his behalf as if it were an arrear of revenue payable directly to Government.

The Deputy Commissioner may, if he thinks fit, comply with such application, but shall, before compliance therewith, give to the persons, who would be defendants if a suit were instituted for the recovery of such arrear, opportunity to show cause against the order which he proposes to make.

The Deputy Commissioner shall not be made a defendant to any suit instituted under section 114 in respect of an arrear as to which an order has been made under this section.

No person on whose account the Deputy Commissioner proceeds under this section to recover an arrear shall thereby be relieved of his responsibility for such arrear.

Note 1.—Unless the Chief Commissioner has by a special or general order under the first paragraph of section 119 directed the recovery of interest on arrears, the arrear recoverable unber this section does not include interest. (C. P. Land-Revenue Manual Vol. I. P. 106)

2. A Lambardar who has paid to the Government the whole of the land revenue assessed upon a mahal cannot recover from the assignee of a defaulting co-sharer. (C. P. L. R. XI. 111 Balaji Sonar vs. Govinda and Dhansing.)

3. *The collection of Revenue in Pattidari villages.* Under the Pattidari system the village has been privately partitioned among the various co-sharers, and each such co-sharer is the land-lord of certain tenants. Under the provisions of the Tenancy Act each pattidar is thus entitled to collect the rents of his patti, and it is impossible in any way to insist

that rents in such villages shall be paid only to the Lamberdar.

4. The Lambardar is, however, the village officer appointed b
Government to represent the whole proprietary body in its relation
with the Government, and all pattidars are responsible to him for th
payment of land Revenue and should pay their contributions towar
the land Revenue of the whole village to him for credit in the Gover
ment Tresury. As the lamberdar is thus by his position responsib
to Government for the whole revenue of the village, he should, wheneve
it is necessary, receive support from the Deputy Commissioner again
any pattidars who refuse to pay their share of the land revenue to hi
Such support can be given by the use of section 116, Land revenue Ac
which permits the Deputy Commissioner to recover an arrear of revenu
from a co-sharer for the Lamberdar by a summary process, and whil
care should de taken that this section is not abused, more recours
should be had to it than has been the custom in the past.

5. When the Deputy Commissioner has decided to take actio
under this Section, the Tahsildar should be told that the issue of process
and notices to the Lambardar, unless specially ordered by the Deput
Commissioner, should cease, and every effort should be made to recov
the revenue from the pattidar in fault. In extreme cases, if oth
measures fail, the provisions of Section 94 (*d*) of the Land Reven
Act should be used, and proposals submitted for the temporary transf
of the patti of the defaulter to the Lambardar. (R. B. C. Vol. II. Seri
No. 13. Section 1.)

Saving of right of malguzar to demand revenue of land assessed to revenue and held free.

117. Nothing in the Indian Limitation Act, 187
and no agreement made after this Act comes into forc
shall bar the right of the malguzars of any mah
assessed with land-revenue to demand revenue in respe
of any land which, having been taken into account i
such assessment, has been held by any person withou
payment of revenue.

The Chief Commissioner may, in his discretio exempt any case from the operation of this section.

Notes.—1 Section 117 is especially intended to enable the malguzar to recover revenue from rent-free grants which he can not resume; but if the present claim might be barred by the Limitation Act, the Section is quite wide enough to save it and it would, operate to revive a right to demand revenue. If this had not been intended, the Section would have provided that nothing therein contained should revive a right to demand revenue, when such right had already become barred under the Limitation or any other Act. [C. P. L. R. I. 31. to 32 Raja Raghojee and Laxman Rao vs. Ganpat Rao deceased, heir Jagoba].

2. The Plaintiff, the malguzar, made an out and out sale of his *Sir* land to the Defendant whom he afterwards sued for the amount of the rent at which the land was assessed. The lower Courts disallowed the claim. *Held* that Section 117 of the Land-Revenue Act was applicable to the case. The land was taken into account in assessing the land revenue of the mahal; and the malguzar who had to pay revenue on it was entitled to demand from the Defendant the revenue at which it was assessed [C. P. L. R. VIII. 106. Raghoba son of Rajeshwar vs. Raghoba son of Rama].

3. Section 117, Land Revenue Act, has no application to land *held* rent-free by a tenant in a malguzari village. It merely authorizes the malguzar to demand revenue from persons who should pay revenue as distinguished from rent. (N. L. R. Vol. I. 153 Sheoprashad and others vs. Hulasi and another.).

Limitation in uits for evenue.

118. No suit for the recovery of revenue payable under a settlement or sub-settlement shall be instituted after three years reckoned from the date on which such revenue becomes payable.

In other respects the limitation of such suits shall be governed by the Indian Limitation Act, XV of 1877.

Notes.—Section 117 Land Revenue Act has no application to land held rent-free by a tenant in a malguzari village. It merely authorizes the malguzar to demand revenue from persons who should pay revenue as distinguished from rent. (N. L. R. Vol I. 153. Sheoprasad and others vs. Hulasi and another).

A suit to enforce the charge referred to in section 65 of the Land Revenue Act is governed by the special rule of limitation contained in section 118 of the Act. (C. P. L. R. Vol XVI. 53. Khemchand and others vs. Dhanraj Kirar).

Interest on Arrears.

Interest on arrears.

119. Interest shall not be charged on an arrear of revenue unless the Chief Commissioner, by general or special order, so directs:

Provided that the Court may award interest at such rate as it thinks fit on sums payable under a sub-settlement.

CHAPTER.—IX.

OF REVENUE AND VILLAGE RECORD.

Correction of record-of-rights.

120. Any entry in the record-of-rights may, after such record has been made over to the Deputy Commissioner, be corrected by the Deputy Commissioner on the application of any person interested, or of his own motion. Such correction may be made on one or more of the following grounds, and on no others:—

(*a*) that all persons interested in such entry wish to have it corrected; or (*b*) that by a decree in a suit brought under section 83, it has been declared to be erroneous; or

(*c*) that, being founded on a decree or order of a Civil Court or on the order of a Revenue or Settlement Officer, it is not in accordance with such decree or order; or

(*d*) that, being founded on such decree or order, the order or decision has subsequently been modified on appeal or review, or has been revised by the Chief Commissioner.

Revision of record in accordance with provision therein contained.

121. The Deputy Commissioner may revise a record-of-rights when such revision is provided for in such record.

Powers of Deputy commissioner as to correction of entry or revision of record.

122. When the Deputy Commissioner takes proceedings for the correction of any entry in the record-of-rights or for the revision of such record-of-rights, he shall exercise, for the purpose of such correction or revision, all the powers which the Chief Settlement Officer might have exercised if the proceedings had been taken whilst the settlement was in progress.

Power to direct that rule or custom entered in record-of-rights shall be enforced by Government.

123. The Chief Commissioner may, in his discretion, by notification in the official Gazette, direct that any specified rule, custom or condition duly entered in the record-of-rights of any specified village shall be enforced by the Government.

Punishment of violation of such rule or custom.

If any of the persons with whom a settlement or sub-settlement has been made violate or neglect any rule, custom or condition with respect to which the Chief Commissioner has made a direction under this section, the Deputy Commissioner may, if no penalty is provided by any law for the time being in force for such violation or neglect, recover from such person a penalty not exceeding two hundred rupees.

Note.—This section will enable Deputy Commissioners to secure to the ryots the enjoyment of their rights of *nistar* in the village waste. Any attempt on the part of malguzars to realise fees from their ryots for use of the village waste, or for cutting wood in the village jungle for fire-wood and other agricultural purposes, should be at once checked and, if necessary, reported so that a notification may be issued under this section. (C. P. Land-Revenue Manual Vol. I. P. 109)

Suit to set aside proceedings under section 123.

124. Any person against whom proceedings have been taken under section 123 may institute a suit against Government to set aside such proceedings on the ground that no rule, custom or condition was, in fact, violated or neglected. If the Court finds that no rule, custom or condition has been violated or neglected, it may by its order annul such proceedings, and direct that any penalty paid by the plaintiff be refunded; and may also award to him such costs as he has necessarily incurred in the proceedings, and such further sum as compensation as it thinks fit.

Powers to control management of forests.

124-A. [1] When under any record-of-rights or sanad or any agreement with the Government the proprietor or the superior or inferior proprietor of any forest-land included within, or forming, a mahal is bound to manage such forest-land in accordance with rules or instructions prescribed by any Government Officer, the Chief Commissioner may make rules regarding the control and management of such forest-land.

(2) If the proprietor or the superior or inferior proprietor, as the case may be, fails to observe the rules so made, the Deputy Commissioner may issue a notice calling on him to show cause, within a reasonable time to be specified in the notice, why he should not be excluded from the possession of the forest-land.

(3) If no sufficient cause is shown, the Deputy Commissioner may, with the previous sanction of the Chief Commissioner, exclude such proprietor from the possession of the forest-land and assume the direct management thereof for a term to be fixed by the Chief Commissioner.

(4) The costs of management shall be borne by the proprietor, or by the superior and inferior proprietors in such proportions as the Chief Commissioner may direct with reference to the amount of their respective interests in the forest or mahal, and shall be realizable as land-revenue.

(5) The profits of such forest-land while under direct management shall be paid to the proprietor, or to the superior and inferior proprietors in the proportions in which the costs of management are borne by them.

(6) No leases, liens, incumbrances or contracts created or made by the proprietor or by any person through or under whom he claims, of, upon or with respect to the forest-land held under direct management, shall be binding upon the Deputy Commissioner during such management.

(7) The Deputy Commissioner may confiscate any timber or other forest-produce cut or removed in contravention of the rules made under subsection (1).

(8) On the expiration of the period fixed for the direct management, the forest-land shall be restored to the proprietor, or superior or inferior proprietor, as the case may be.

Notification No. 7484 of 26th October 1891.

I.—The following trees growing on malguzari forest-lands shall not be cut without the permission of the Deputy Commissioner:—

Mango, Mahua, Achar, Jamun, Harra and Bahera, and the fruit-bearing Tendu.

II.—Subject to the preceding rule and also subject to the obligation of giving two months' notice to the Deputy Commissioner in the form appended to these rules, malguzars are at liberty to cut and dispose of, as they please, forest-produce growing on culturable land in their mahals, in order to clear the land for cultivation.

Provided that it shall be competent to the Deputy Commissioner, for reasons to be recorded in writing, to prohibit or to restrict such cutting if prohibition or restriction appears to him to be desirable in the interests of the public generally, or of the village community by whom rights of *nistar* are enjoyed under the wajib-ul-arz or by custom.

III.—The cutting of forest-produce growing on culturable land not required for cultivation and the cutting of forest-produce growing on unculturable land, that is to say, land which in the judgment of the Deputy Commissioner is to be classed as unculturable—*Bhutua*, *Barra*, *Bardi*, *Bhata* or *Pathar*—shall be limited by the following conditions in addition to those laid down in Rule I.

(1) A forest is not to be leased out to a contractor without permission of the Deputy Commissioner.

(2) In cutting timber trees, seed-bearing trees must be left at the rate of not less than 30 per acre of the principal kinds cut; and the number of trees of all kinds left growing must not be less than 90 per acre, which number should be equally distributed throughout the area over which the cutting was effected.

(3) In cutting timber and brushwood, the cutting must be effected flush with the ground, so as to encourage reproduction by shoots from the stool.

(4) In cutting bamboos, all culms of less than two years' growth must be left in the clump.

(5) The digging up of roots is prohibited, except in the case of the *palas*, the roots of which may be dug up for fibre provided that at least one-third of the roots are left to each tree to continue its growth.

(6) No cutting shall, without the permission of the Deputy Commissioner, be effected within a distance of 20 yards (or 40 *haths*) of either bank of a streem or nala in which water ordinarily remains till the month of January.

(7) The ringing of *sal* trees for resin, so as to sever the bark round the entire circumference, is prohibited.

IV.—Any material violation of Rules I, II and III will render the forest liable to be notified as requiring special protection.

Notification No. 2576, dated the 9th July 1903, No. 240, dated the 10th July 1903.

V.—Where any malguzari forest land has been notified by the Deputy Commissioner as requiring special protection, the proprietor or superior or inferior proprietor bound to manage such forest land in accordance with these rules shall not cut or cause to be cut for sale, or for conveyance or use outside the village area, any timber, bamboos or brushwood, save with the previous sanction of the Deputy Commissioner and in the manner and to the extent permitted thereby.

VI.—Leaves, grass and dead wood may at all times without any permission be removed from a malguzari forest by people entitled to do so.

VII.—In malguzari forest areas, which have been notified by the Deputy Commissioner under the preceding rule, the cutting of timber bamboos, or brushwood for domestic consumption (*nistar*) will ordinarily be allowed without express permission, but the Deputy Commissioner may limit such cutting for nistar if he considers a limitation necessary for the preservation of the forest.

VIII.—Any malguzar or malguzars who may submit through the Deputy Commissioner a special plan for the working of his or their forests or who may apply to have a working plan made out for him or them and at his or their expense by the Forest Officer, shall, on such plan being approved by the Commissioner, be exempt from the operation of the preceding rules during the currency of such plan and so long as its provisions are observed.

Form of Notice under rule II.

Name of Malguzar.	Name of forest and village in which it is proposed to cut timber.	Estimated area of forest.	Area which it is proposed to clear for cultivation, with description of soil.	By whom the land when cleared is to be cultivated.	Estimated number of timber trees to be cut, with specification of species of trees.
1	2	3	4	5	6

Note.—This notice may be sent to the Deputy Commissioner by registered letter. If the assignee receives, within the two months following the notice, no communication from the Deputy Commissioner under the proviso to Rule II, he may proceed to clear the land and dispose of the timber as he pleases. (C. P. Land-Revenue Manual Vol. I, P. 113.)

The following rules have been made for the management of forest lands in all the zamindaris of the Central Provinces:—

I.—No *dahia* or *bewar* cultivation will be permitted in tracts in which this is prohibited by the Deputy Commissioner.

II.—In tracts which are specially reserved under the orders of the Deputy Commissioner, no timber may be cut except by his express permission. Such permission will be given in writing, and will specify the character and amount of the timber to be cut in each case.

III. In working the forests included in the tracts to which Rule II applies, Zamindars will carefully observe any instructions issued by the Deputy Commissioner.

IV.—An account must be kept by the Zamindar of all timber cut in forests to which Rule II applies; and all timber removed from such forests must be covered by passes formally issued and registered under such detailed instructions as the Deputy Commissioner may issue,

Panabaras and Ahiri zamindaris in Chanda.	Notification	No.	555	dated the	31st January 1890
Bhandara ...	,,	,,	76	,,	8th January 90
Balaghat ...	,,	,,	2184,	,,	15th April 90
Raipur ... Bilaspur .. Sambalpur ...	,,	,,	7491	,,	27th November 90
Hoshangabad ... Chhindwara ...	,,	,,	4523,	,,	24th July 91
The rest of the zamindaris in Chanda.	,,	,,	1408,	,,	10th March 1904

Powers of Chief Commissioner as to registration of changes after preparation of record-of-rights.

125. The Chief Commissioner may—

(*a*) direct that the mukaddam of each village shall, for the purpose of showing the changes occurring therein (from time to time) prepare, or, where there is a patwari, cause to be prepared, and furnish, annually for such village, papers in such form, at such time, containing such particulars, and attested in such manner, as the Chief Commissioner may, from time to time, prescribe;

(*b*) lay down the procedure to be followed in order to ascertain that a change has occurred in the village, and the nature of such change.

All changes referred to in this section shall be recorded in such registers as the Chief Commissioner appoints, and not in the record-of-rights, and the Chief Commissioner may direct that, before any specified changes are recorded, the order of a specified Revenue Officer shall be obtained in this behalf.

Note.—This section empowers the Chief Commissioner to lay down the procedure to be followed by Revenue Officers in order to ascertain whether changes in proprietary interest amongst proprietors, co-sharers or malik-makbuza of mahals have really taken place. The Chief Commissioner has accordingly issued the following instructions on the subject (vide Notification No. 4935 dated the 21st November, 1895):—

I.—All transfers of property occurring amongst the proprietors, co-sharers or malik-makbuzas of a mahal shall be recorded in a register in the following form (to be called the " Register of Proprietary Mutations "), which shall be maintained by the kanungo of the Tahsil.

II.—Register A constitutes a register for reference or initial register and is to be written every third year between the 1st August and 1st October, all changes that have been noted in Register B being amalgamated in it. Register B is intended for a record of the changes. Each transfer will be entered in order as it occurs, and separate pages will not be allotted for each mahal. An index should be provided in which the mauzas will be entered in alphabetical order and the numbers of the pages where any transfer is noted should be entered in the index against the name of the mauza. At the same time the serial No. of page and date and year in which transfer occurred should be entered in Register A in the column provided. A fresh Register B should be opened every third year after the changes entered in it have been brought on to Register A.

NAME AND NUMBER OF MAHAL.

A.—Statement of Persons possessing Proprietary Rights in the Mahal.

PROPRIETORS, CO-SHARERS OR MUAFIDARS OF MAHALS.				MALIK-MAKBUZAS OR MUAFIDARS OF PLOT.				Serial No. in Register B. and No. of Page.	Date and year in which transfer occurred.
Name of each proprietor, co-sharer or muafidar (noting which of them is lambardar)	*Details of shares*			Name of each malik-makbuza or muafidar.	*Details of plot.*				
	Fractional amount of share.	Area.	Revenue.		Khasra No. of plot.	Area.	Revenue.		
1	2	3	4	5	6	7	8	9	10

B.—Detail of transfers occurring during years.

Serial No.	No. and name of mauza.	Nature of transfer.	Name of proprietor, co-sharer, malik-makbuza or muafidar whose name is removed.	Name of proprietor, co-sharer, malik-makbuza or muafidar whose name is added.	Khasra No. of plot.	Amount of share transferred.	Area of share or plot transferred.	Revenue of share or plot transferred.	Consideration money if transferred not by inheritance.	Encumbrances known to exist on property transferred.	Date of transfer.	Date of orders authorizing transfer.	Amount of fees levied.
1	2	3	4	5	6	7	8	9	10	11	12	13	14

III.—No transfer shall be recorded in the register of proprietary mutations except under the orders of the Deputy Commissioner or of an Assistant Commissioner empowered by him to dispose of cases under these rules.

IV.—Should the kanungo receive notice of a transfer from the Patwari, Revenue Inspector, or any person other than the person who under section 126 is bound to give notice of such transfer, he shall make a written report to the Tahsildar. The Tahsildar shall then summon and examine the person bound under section 126 to give such notice, with reference to the truth of the transfer and the reason for his having omitted to report it, and shall submit the record of such examination to the Deputy Commissioner or Assistant Commissioner empowered under Rule II for any action which may be thought necessary under section 127 of the Act. If the person so summoned admits the truth of the alleged transfer, the record of his examination shall be accepted as a notice under section 126.

V. On the receipt by a Tahsildar of a notice under section 126 he shall cause a proclamation, in the form appended, to be affixed to some conspicuous place in the mahal or in each of the mahals in which the succession to or transfer of proprietary rights is reported to have taken place, and also to the door-way or other conspicuous part of the tahsil office.

Form of Proclamation.

It is hereby notified that a notice has been received that the proprietary rights noted below have been transferred by.......................from A. B. son of............to C. D. son of...............and that C. D. has received possession of the said rights.

Any person who may deny that the said rights have been transferred, and objects to the alleged transfer being recorded on the ground that it has not taken place, must prefer his objection at the Court of the Tahsildar on the........... of...............190 .

Mahal.	Whether proprietor, co-sharer, muafidar or malik-makbuza.	Fractional share if co-sharer.	Area.	Government revenue.
1	2	3	4	5

VI. On the date named in the proclamation, if no objection be lodged, and if the fact of possession is clear and undisputed, the Tahsildar shall report the case to the Deputy Commissioner or Assistant Commissioner empowered under Rule II, for the issue of orders authorizing the entry of the transfer in the register of proprietary mutations.

VII. If any objections are raised to the record of the transfer on the ground that possession has not been transferred to the person who claims to have his name recorded, or if the transfer of possession is not clear, the Tahsildar shall forward all the papers to the Deputy Commissioner or Assistant Commissioner empowered under Rule II, reporting at the same time all the ascertained circumstances of the case. The Deputy Commissioner or Assistant Commissioner shall, after such further enquiry as he deems necessary, pass final orders on the case, sending a copy of the orders to the Tahsildar.

VIII.—No fee shall be levied for the issue of a proclamation under these rules, and no service fee shall be levied for the summoning of witnesses, except from a person making objection under Rule IV.

IX.—A fee shall be levied from the person in whose favour a transfer is recorded under Rules V and VI, and shall be calculated at the following rates:—

(a)	For mutations by sale (whether private or ordered by Court), or by mortgage or lease or by any form of transfer other than inheritance.	Four annas per fifty rupees of revenue asseseed on the land transferred. If the land transferred be revenue-free two annas per fifty rupees of rental.
(b)	For mutations by inheritance.	Two annas per fifty rupees of revenue assessed on the land transferred. If the land transferred be revenue-free, one anna per fifty rupees of rental.

Provided that—

(1) a fraction of fifty rupees shall be reckoned as fifty rupees;

(2) no fee shall be less than four annas or more than five rupees in any one case.

X. The Tahsildar will collect the fees leviable under the preceding rule, at the time of writing his report, from the person in whose favour he recommends that mutation be recorded.

If his proposals are not confirmed under Rules V or VI, the Collector will order a refund of the amount collected.

XI. Fees will be credited into the treasury by challans in triplicate. One portion of the challan will be retained for record in the treasury, one will be returned to the payee as a receipt, and the third will be filed with the record of the case. The revenue record-keeper must refuse to accept a record in which a copy of the challan for the fees due is not filed, unless it be accompanied by a special order of the Deputy Commissioner directing that it be received into the record-room without a challan.

Correction of record of rights:—It is important to note that the record-of-rights prepared by the Settlement Officer under the provisions of chapter VI. of the C. P. Land Revenue Act shall not be altered or corrected; all corrections and changes shall, however, be duly noted in a Register called "The Register of mutation of names."

"The mutation of names" says Mr. Thomson in his *directions to collectors* Para 200, "in the register is a duty incumbent on the Collector without reference to the wishes of any party. He is bound, by means of the establishment placed at his disposal, to keep himself apprised of all changes of property. On satisfying himself of their actual occurrence he is bound to make the corresponding mutation of names in his register or to levy the fees appropriated by the legislature for the maintenance of his record. Unless he punctually performs the duty, his registers will lose their value and will cease to be the accurate record of facts which they are designed to be. The execution of a new engagement for payment of the land revenue is unnecessary, because no private transfer affects the rights of Government to realise its demand from the land itself or from the property of the occupant proprietor. (Azizuddin's N. W. P. and Oudh Revenue Act. P. 34)

A suit for mutation of names does not lie as a Revenue-Officer alone has power to make mutation and the suit can not be brought against him to compel him to do so. (C. P. L. R. II. 181 Paikoo and others vs. Jairam.)

Possession of proprietary rights to be notified.

126. All persons lawfully entering into possession of proprietary rights and interests in any land shall, within a reasonable time, give notice of such entry to the Tahsildar of the *tahsil* in which such land is situated.

Notes.—The object of this section is to enforce compliance with the law requiring the transferees of proprietary rights in villages and mahals to report the transfer or change in possession. The following instructions contained in Central Provinces Revenue Manual Vol. I Page 118 will be usefully noted:—

(1) The Chief Commissioner considers that except under special circumstances, the delay in giving notice should not be allowed to exceed one month.

(2) A mortgagee with possession is bound to notify his entry into possession.

(3) In all cases of mortgage with possession, and cases in which a lease is given for a longer period than a year, mutation proceedings should be instituted and the name of the mortgagee or lessee should be entered in the register of proprietary mutations in addition to—not in the place of the name of the proprietor. Similar proceedings should, of course, be taken when a mortgage with possession is redeemed and the proprietor re-enters into possession or the lease terminates [C. P. R. M. vol. I P. 118]

Mutation, when translated into vernacular means *Dakhil-Kharij*, is the removal of one name and the substitution of the other, and this can not be done when it is not known whose name is to be removed (Azizuddin's N. W. P. and Oudh Revenue. Act. P. 35 and 36)

Where the question was, whether a change of names in the Collectorate record-of-rights represented a *bonafide* transfer by the Plaintiff or whether there was a mere assent by her to a paper transaction, relating to the ownership of a share in a village in giving which assent she had not acted freely but under undue influence. Reversing the decision of the High Court which was that the Plaintiff had assented to the proceeding under intimidation, their Lordships held that on the evidence no intimidation had been proved and that a suit to cancel this *Dakhil-Kharij* and for a declaration of the proprietary right of the Plaintiff in whose name the village stood before the mutation had been rightly dismissed in the first Court. (I. L. R. XI. All. P. 399 Hurlal vs. Sardar.)

The Collector has no right to refuse to register a transfer on the ground that the existing *Khewat* is incorrect and does not show the transferee's name; when error in the *Khewat* is brought to his notice he is bound to correct it. (Khoja Mohammad Ahmad vs. Mst: Haidari Begum B. F. No. 74 of 1899 unreported, Alligarh-See Azizuddin's N. W. P. Revenue Act P. 36)

When a Hindu widow has been in possession of property since her husband's death and never transferred it to her adopted son, *held* that the latter's attempt, successful or unsuccessful, to collect rent from the tenants will not amount to a transfer under the Revenue Act, and her name cannot be removed from the record of rights. *Held*, further, that it is beyond the province of the Revenue Courts to say whether an adoption is valid and operative, or whether the terms of the will that her possession has remained vicarious on behalf of the other party. [Thakurain Gunga kuar vs. Lall Omrro Singh B. F. No. 32 of 1895-96, unreported]

Transfer how made:—

A transfer of property may be made without writing in any case in which a writing is not expressly required by law. (Section 9 of the Transfer of Property Act IV of 1882). In the case of a sale of immoveable property of the value of Rs. 100 or upwards, and in the case of a sale of a reversion or other intangible thing there must be a writing which further must be registered (See Section, 54 of the Transfer of Property Act IV of 1882). In all mortgages when the amount secured is Rs. 100 or upwards, there must be a writing which must be registered (Section 59 of the said Act.) Leases of immoveable property from year to year or for any term exceeding one year or reserving a yearly rent, there must be a deed registration of which is compulsory (Section 107 of the Act). Exchanges of immoveable property are subject to the same rules as sales (section 118 of the Act). In all cases of gifts of immoveable property, the transaction can only be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses (Section 123 of the Act).

Entry in Collector's Register:—Registeration in the Collector's books is not of itself a proof of title [10 W. R. 393 Govind Nath Sen vs. Govindchander Sen] See also 14 W. R. 49

The Collector's book is kept for purposes of revenue, not for purposes of title, and the fact of a person's name being entered in the Collector's books as occupant of land does not necessarily of itself establish that person's title, or defeat the title of any other person [10 Bombay 187, Fatma vs. Darya Saheb; 10 Bombay 192 Collector of Poona vs. Bhooanray Balkrishna].

The fact of a person's name being entered in the Collector's book as occupant of land does not necessarily of itself establish that person's title or defeat the title of any other person [I. L. R, Bombay 13 P. 75 Bhogaji vs. Bapuji].

Extinguishment of title by long and continuous possession:—Twelve years' continuous possession of land by a wrong-doer not only bars the remedy and extinguishes the title of the rightful owner, but confers a good title upon the wrong-doer (I. L. R. 3 Calcutta 224 Gossain Dass Chunder vs. Issur Chander Nath). But a title to hold land free from assessment to revenue cannot be acquired by any length of possession revenue free [I. L. R. 7 Allahabad 140].

Possession Defined:—Possession is the occupation of anything with the intention of exercising the right of ownership in respect of it (Hunter's Roman Law Page 209).

What possession means and signifies:—"There are two elements in the legal conception of possession—a physical element and a mental element In order to constitute possession in a *legal* sense there must exist not only the *physical* power (or rather the *possibility*) to deal with the thing as we like, and to exclude others, but also the *determination* to exercise that physical power or control on our own behalf. When possession has been once received it is not necessary that the physical power should be retained at every moment of time; the possession will continue if we can reproduce that physical power at any moment we wish it; and it will cease when we cannot do so. It is also not necessary that the determination or intention to possess should be constantly present to our minds; it will be sufficient for the purpose of retaining possession that we should, if we adverted to it, keep to that determination. According to this notion of possession, it follows that, when either of the two elements is wanting, there is no possession"—(Tagore Law Lectures VI. Pages 126 to 127).

How possession is proved:—It is not necessary, in order to prove possession, to prove actual bodily continuous possession. (*Per* Sir Barnes Peacock, C. J. quoting Domat, in Watson, vs. Government 3. W. R. 73 at P. 80). But possession is not necessarily the same thing as actual user or enjoyment. Where the land is incapable of any beneficial use, or where it yields some trifling profit only now and then, where it is permanently or temporarily incapable of actual enjoyment in any of the usual modes as by residence, tillage or receipt of a settled rent, it would be unreasonable to look for the same evidence of possession as in the case of a house or a cultivated field. All that can be required is that the Plaintiff should show such acts of ownership as are natural under the existing condition of the land, and in such cases *when he has done this,* his possession is presumed to continue as long as the state of the land remains unchanged, *unless he is shown to have been dispossessed.* Where lands are, by natural causes (such as diluvion) placed wholly out of the reach of their owner, if the Plaintiff shows his possession down to the time when they were as placed out of his reach, his possession is presumed to continue so long as the land continue to be in that condition (Tagore Law Lectures 1882 P. 118 to 120).

Legal possession:—Legal or Juridical " possession" should be distinguished from the mere *physical* " occupation " or " detention " or " custody " of a " corporeal " thing. Legal possession is the state of being in possession in the eye of the law. (Pollock on Possession Page 26) It includes cases of " constructive possession " " wrongful possession " and " Lawful possession ".—" Lawful possession " means a legal possession which is *also* rightful or at least excusable; this may be consistent with a superior right to possess in some other person [Pollock Page 28].

How possession is lost:—" When we have lost the *physical* control over the thing, we have lost possession, whether we *know* it or not. [Markby section 365]. Ignorance of the owner will not prevent the accrual of a title by prescription (Secretary of State vs. Vira Rayan I. L. R. 9 Madras 175 at Page 183). Knowledge may be *presumed* from an open and notorious act of taking possession [See Angell, section 392). But as one of the legal consequences of possession is the right to use force in defending possession, a trespasser cannot by the very act of trespass, *immediately* and *without acquiescence* on the part of the owner or the party in possession become *possessed* of the land or house upon which he has trespassed. If, however, he determines to hold the property on his own behalf, and is allowed to continue on the land or house, and the owner or party in possession makes no effort to remove him, he does gain possession, the law no longer allowing the owner or party in possession to reproduce his physical control and eject the trespasser by force " [Tagore Law Lectures 1882 Page 127 to 129].

When a person entitled to possession enters in the assertion of that possession, the law *immediately* vests the actual possession in that person (Lows. vs. Telford I. App. Cas: 441; 426). So far as relates to the fact of possession and its legal consequences, it makes no difference whether it has been taken by the legal owners *forcibly or not*. But possession under *forcible* entry is no justification for wrongs committed in the course of the entry, such as assaulting the wrongful possesion or damaging his goods (Lightwood on possession Page 140-142)

Of two persons entering simultaneously, the English Law assigns possession to him that has the right, by a rule identical in substance with that of the Hindu Law on the same subject [Lellu vs. Annaji I. L. L. 5. Bombay 387-390]. If there are two persons in a field each asserting his right to it, the person who has the title, is in actual possession, and the other person is a mere trespassor (Jones vs. Chapman 2. Ex. at Page 821). The expression " actual possession " here means " legal possession " not *defacto* possession. It is difficult to determine which of these two persons is in *defacto* possession. But the person who has the title is, in the eye of law, in possession. But where possession in *fact* is undetermined, possession in law follows the right to possess (Pollock on Possession Page 24)

Possession exclusive and through representative:—Possession in a legal sense is the *determination* to exercise physical control over a thing on one's own behalf coupled with the *capacity* of doing so; and is therefore of necessity exclusive. Only one person can be in possession of the same thing at the sametime [see Pollock on Possession P. 20).

" The possession of a thing through our servant, bailiff or other represantative is our possession not fictitiously or constructively but really and directly; for we may at any moment, supposing the representative is obedient to our commands, resume our physical control over the thing. The so-called possession of the representative is detention not possession in a legal or juridical sense. The conditions necessary to constitute possession through a representative are:—

(*a*) that the representative must have the physical control over the thing;

(*b*) that the representative must determine that the physical control shall be exercised on behalf of the principal; and

(c) that the principal must assent to its being so exercised.

If the representative changes his mind and determines to hold the property on behalf of himself, strictly speaking, the possession of the principal is gone. But there, the law interferes in favour of the principal, and holds that his possession continues, atleast, until the denial of his right is brought to his knowledge. (Tagore Law Lectures, Lecture IV. Page 132 to 133).

Mode of enjoyment:—Enjoyment accompanied with an *assertion* of full ownership is possession. Enjoyment in the assertion of a fragmentary right in another's property is *quasi possession* (I. L. R. 9. Madras. 235 at Page 305 and 306]. Exercising the right of grazing cattle, cutting timber, and collecting mountain-produce in assertion of a persistent claim of right to a *tract of wild* land, even when such enjoyment is not *exclusive*, may amount to proprietary possession of the land. It is, no doubt, possible that other persons exercising similar rights in the assertion of rights of easement may be in *quasi*-possession of such incorporeal rights over the same land. [See, Secretary of State vs. Nillakutti I. L. R. 15 Madras 101 P. C.]

Possession of part is possession of the whole:—Generally speaking possession of part is, in law, possession of the whole, if the whole is otherwise vacant. This constructive possession is an incident of *ownership*, and results from title. It is in no way applicable to a case where the occupant defends himself avowedly and exclusively on the ground of his own wrong, that is, on the ground of his possession only, and without claiming any title. Possession of land, by a party not claiming title, is confined to the part *actually* occupied by him (Miller vs. Shaw). But a person who enters under a claim or color of title is regarded with more favour than a mere naked disseizor. If one has already got constructive possession, by occupying a part under color of title, another cannot acquire a constructive possession to the same extent, in the same manner. Though the latter enters on part with color of title to the whole, his possession will be confined in extent to the part which he actually occupies. Constructive adverse possession, ceases as to undisclosed land, when the true owner enters upon any part of his land. A party who is in possession of land without title can have no constructive possession, beyond the limits of his actual occupation. (Biglow's Leading cases on Torts P. 358; Pollock on Possession P. 80; Lightwood on Possession P. 40).

Constructive or ideal possession of the whole.—Their Lordships of the Privy Council have held that when a tract of land with a defined boundary has been throughout claimed as owner, and acts of ownership have been done upon various portions of it, such acts of enjoyment may be accepted as evidence of the possession of the whole. This rule of evidence is not applicable to a question of *undefined* and disputed boundary.

If a large field is surrounded by hedges, acts done in one part of it would be evidence of the possession of the whole. If the boundaries of a tract of land throughout claimed by A as owner, are well defined, and A's actual possession of a part of such tract is proved, the Court may presume that A had at least an ideal or constructive possession of the other parts of the same tract. If the question is whether a particular plot of land is included within estate X, or in the conterminous estate Y, if, in short there is a boundary dispute, acts of possession over other parts of estate X, or over other parts of estate Y, cannot possibly be any evidence as to the possession of the disputed plot. But if the boundaries between the two estates have been established by agreement of parties or otherwise, and the disputed plot is within the boundaries of one of the two estates, acts of possession in other parts of that estate would be evidence of possession of the disputed plot. (Clark vs. Elphinstone 6 Appeal cases, 164).

Fine for neglect to give notice of possession.

127. Any person neglecting to give the notice required by section 126 shall be liable, at the discretion of the Deputy Commissioner or Assistant Commissioner, to fine which may extend to fifty rupees for each day during which such neglect continues.

Note:—This section is the reproduction of Section 100 of the N.

W. P. Land Revenue Act No. XIX of 1873. This latter section has however, been replaced by Section 38 of the new N. W. P. & Oudh Revenue Act III of 1901 which contains the following provisions:—

> "Any person neglecting to make the report required by Section 34 within three months from the date of obtaining possession under a mortgage or lease, or from the date of the succession or other transfer, shall be liable to a fine not exceeding five times the amount of the fee which could otherwise have been payable under Section 37, or, when no fee is leviable, then not exceeding such amount as the Board may by rule prescribe".

The Board of Revenue have under the above section laid down the following scale of penalties for the guidance of District Officers, it being understood that it is not intended thereby to limit the discretion of the District Officers, whenever, with regard to the circumstances of a case, it is deemed undesirable to follow this scale:—

(1) If report is made within three months; no penalty.
(2) From 3 to 6 months, equal to fees.
(3) From 6 to 12 months, three times the fees.
(4) From 12 months onwards, five times the fees.

[Circular Letter No. of 1899 Dated 10th June 1899].

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Note:—It is important to note that no such provision exists under the C. P. Land Revenue Act for the Central Provinces.

Obligation to aid in preparation of village-papers.

128. All persons being in possession of proprietary rights in land shall, on being so required by the Deputy Commissioner, prepare, or cause to be prepared, such papers, and furnish such information, as may be required for the preparation of the village-papers prescribed under section 125.

Note:—The object of this section is to compel enforcement of the provision of law contained in Section 125 of the C. P. Land-Revenue

Act requiring the transferees of proprietary rights to report the transfer

The use of the word "shall" in this section indicates that the obligation on all persons being in possession of proprietary rights in land to prepare or cause to be prepared papers &c. is mandatory and not obligatory.

See also notes under Section 125 *ante*.

Fees for recording changes.

129. The Chief Commissioner may direct that fees shall be leviable when changes are recorded under the last clause of section 125, and may fix the amount of such fees.

from whom leviable.

All fees so leviable shall be levied from the person in whose favour the change is made.

Note I.— The following scale of fees leviable under this section has been fixed by the Chief Commissioner C. P:—

A fee shall be levied from the person in whose favour a transfer is recorded and shall be calculated at the following rates:—

(*a*)	For mutations by sale [whether private or by order of Court], or by mortgage or lease or by any form of transfer other than inheritance.	Four annas per fifty rupees of revenue assessed on the land transferred. If the land transferred be revenue free, two annas per fifty rupees of rental.
(*b*)	For mutations by inheritance.	Two annas per fifty rupees of revenue assessed on the land transferred. If the land transferred be revenue-free, one anna per fifty rupees of rental.

Provided that—

(1) a fraction of fifty rupees shall be reckoned as fifty rupees;

(2) no fee shall be less than four annas or more than five rupees in any one case.

The Tahsildar will collect the fees leviable under the preceeding rule at the time of writing his report from the person in whose favour he recommends that mutation be recorded. If his proposals are not conferred the Collector will order a refund of the amount collected.

Fees will be credited into the treasury by challans in triplicate. One portion of the challan will be retained for record in the treasury, one will be returned to the payee as a receipt, and the third will be filed with the record of the case. The revenue record-keeper must refuse to accept a record in which a copy of the challan for the fees due is not filed, unless it be accompanied by a special order of the Deputy Commissioner directing that it be received into the record-room without a coallan. [See Rules VIII to X framed under Section 125 of the C. P. Land Revenue Act.]

Note II:—Section 40 of the N. W. P. Land Revenue Act enacts as follows:—

"(1) All disputes regarding entries in the annual register shall be decided on the basis of possession.

(2) If, in the course of enquiry into a dispute under this section the Collector is unable to satisfy himself as to which party is in possession, he shall ascertain by summary enquiry who is the person best entitled to the property, and shall put such person in possession.

(3) No order as to possession passed under this section shall debar any person from establishing his right to the property in any Civil or Revenue Court having jurisdiction."

It will be observed that the powers granted under the above section to Revenue Officers in the Upper Provinces for the summary disposal of disputes regarding entries in the mutation Register arising between contending parties have not been conferred upon Revenue Officers in the Central Provinces. The rule that all disputes shall be decided on the basis of possession is generally followed in the Central Provinces but the provision in clause [2] of Section 40 quoted above that in the absense of clear evidence to show who is in possession, the Collector must decide what party appears best entitled to possession, is never resorted to by Revenue Officers in these provinces as no such power has been given under the Land Revenue Act.

Note III:—It may be remarked that *Dakhilkharij* is a process that has no judicial character, but it is merely the declaration ie. the entry in the Collector's register of the name of the person to whom the Collector is look for the payment of the Government Revenue. The procedure adopted must be simple enough to facilitate the prompt disposal of mutation cases.

The first question for decision in a claim for mutation of names is that of possession. It is only on failure of evidence on this point that regard can be had to the question of right to succeed. [*Bhikhan vs. Gajadhar.* L. R., VIII. All. P. 12, *Murad Bibi vs. Ahamad Ali* S. D. B. 1887 p. 11].

Annual enquiry regarding land held free from revenue.

130. The Deputy Commissioner shall in each year make enquiry regarding all cases in which land has been granted by Government, conditionally or for a time, free, wholly or in part, from the payment of revenue.

Procedure on breach of conditions of grant.

If it appears to the Deputy Commissioner that the conditions of any grant have been broken by the grantee, he shall report the case through the Commissioner of the Division for the orders of the Chief Commissioner, who may direct that the land be assessed or may psss such other order as he thinks fit.

Procedure on expiry of term of grant.

If it appears to the Deputy Commissioner that the term of any such grant has expired, or (when the grant is for a life or lives) if the person last entitled to hold the land comprised in the grant, free from revenue, or at less than full revenue-rates, has died, he shall assess the same, and shall report his proceedings through the Commissioner of the Division for the sanction of the Chief Commissioner.

The following instructions regarding Muafi and Ubari grants are embodied in Revenue Book Circular Vol. II Section I Serial No. 2:—

In every district office a complete printed Register of Revenue-free and Quit-Grants in the district will be maintained in Form A. A separate portion of the register should be set apart for each tahsil, and in each such portion there should be four sections for the separate entry of the four classes of grants:—

A.—For life or lives.

B.—For a fixed period.

C.—Subject to definite and particular conditions.

D.—Subject to indefinite or no conditions.

In making entries under these heads, the order to be followed should be—

I.—Whole villages.

II.—Parts of villages.

III.—Plots.

A copy of this register for each district of the Division will also be kept in the Commissioner's office.

2. A Muafi List will be maintained in each tahsil in Form B. It will be divided into the same section as the District Muafi Register, and the entries should be arranged in the same order. This list in no way replaces the District Muafi Register, but is merely maintained as a guide to the Tahsildars in the annual enquiries into muafi grants.

3. An abstract should be added at the end of forms A and B showing the total amount of revenue alienated according to the entries as they stood at the date the register was prepared, subsequent changes being added or subtracted as they occur, and progressive totals and balances being struck.

This information will be supplied to the Government of India in Form IV-A appended to Revenue Book Circular No. II—6, along with the revenue statistics forming Annexure D to the annual review of the Revenue Administration of the Central Provinces.

4. Under Section 130 of the Land Revenue Act, the Deputy Commissioner is bound to make enquiry every year regarding all cases in which land has been granted by Government conditionally or for a term, free wholly, or in part, from the payment of land revenue.

This provision is made to guard against the object of Govenment in making such grants being defeated.

5. On the 1st October of each year, Deputy Commissioner should issue a general order to their Tahsildars reminding them of the necessity of enquiring into the state of these grants. Any lengthy enquiry is not required, and the result need only be recorded.

On the 3rd of each month, the Tahsildar will submit a report of all cases enquired into during the previous month, until the annual enquiries into the state of all grants have been completed.

This report will be in the following form:—

Serial No. of Tahsil List of Muafis.	Serial No. of District Muafi Register.	Results of enquiries

Grants should be classed according to Classes A, B, C and D of the Tahsil Muafi List.

In the column of results, details should be given in all cases regarding the life of the grantee, or the alienation, either permanent or temporary, of the subject of the grant, and in the case of conditional grant, regarding the fulfilment or non-fulfilment of the conditions.

This report will be accompanied by a Progress Return in the following form:—

Grants.	Class A.	Class B.	Class C.	Class D.
1	2	3	4	5
Total number for enquiry. ...				
Enquired into previously. ...				
Enquired into during the month.				
Balance for enquiry.				

Dated *Tahsildar.*

6. At the time of submitting this monthly return, the Tahsildar will enter his signature opposite the serial number of each case reported on by him, in the columns for the current year of the Muafi Check Register.

This register is maintained in the following form, columns for ten years being provided:—

Serial No. of grant on Tahsil Muafi List.	SIGNATURE OF TAHSILDAR.				
	1894-95	1895-96	1896-97	1897-98	&c.

The monthly reports of enquiries will be filed in the *Kabuliyat-Basta*, after examination by the Deputy Commissioner.

7. Whenever it is reported that the grantee has died, or possession of the subject of the grant has been transferred, a separate detailed

~~report should be made, which will form the nucleus of~~ a Muafi resumption misl.

8. The Chief Commissioner has the sole power to decide authoritatively, whether a grant shall be resumed or not, and all doubtful cases must be reported, through the Commissioner of the Divission, for his orders.

Few such cases will arise on the death of a grantee, except where the grant is for more than one life, and the right of succession is not clear. When this is the case, a detailed report must be submitted.

Cases of alienation present more difficulty, and no fixed principles can be laid down. Broadly speaking, resumption will not follow an alienation, either permanent or temporary, provided the intention of the grant is still fulfilled. Grants in perpetuity or for more than one life, even though no condition is expressed, were always made by Government with the object of maintaining the family of the grantee in a suitable station of life. It was not intended that any holder for the time being should be able to realize the whole benefit for himself, and alienation would, therefore, be followed by resumption. In the case of grants, subject to loyalty and good conduct, or any similar condition of a personal nature, resumption of the grant would certainly be ordered on transfer of the land. In other cases, the grant would be allowed to continue in favour of ~~the transferee, provided~~ that the condition ~~was fulfilled.~~

9. No definite orders can be issued regarding the effect of temporary alienations of the grant by lease or usufructuary mortgage, and each case must be dealt with on its merits. An arrangement by which the grantee remains out of possession for a long term of years may defeat the object of the grant as effectuallay as a permanent transfer; and all cases of transfer, by usufructuary mortgage or by a lease for more than five years, must be reported, through the Commissioner of Division, for the Chief Commissioner's orders.

An exception can, however, be made in the case of quit-rent grants by commutation.

In 1866 the Government allowed certain revenue-free grantees the option of changing their privileges for a perpetual quite-rent grant;

many grantees accepted the terms, and such commutation grants are freely transferable. It must be noted in this connection that the privilege conceded was the right to hold, on payment of a fixed proportion of the revenue assessed on the holdings, and that the actual amount of the quite-rent has not been fixed in perpetuity. The revenue itself is liable to revision at each periodical Settlement.

10. Where grants have been made for a specific purpose, or subject to loyalty or good behaviour, the condition of the grant must be strictly fulfilled. Thus, in the case of grants for the maintenance of groves, or for such time as trees remain standing, the condition implies that the grove is open to the public and that dead trees are replaced. Where the condition is loyalty and good behaviour, the conviction of the holder of any cognizable criminal offence would render the grant liable to resumption.

11. All cases of breaches of condition on which a grant was made must be reported to the Chief Commissioner, for orders, under paragraph 2 of Section 130 of the Land-Revenue Act, and it must be noticed that, in such cases, the Deputy Commissioner's duty is simply to report, and that no revenue is assessed or arrears collected pending orders. Where, however, the grant is for a term or for a life, and the term has expired, or the last person entitled to hold it has died, the Deputy Commissioner, under paragraph 3 of Section 130 of the Land-Revenue Act, assesses the grant to revenue and collects arrears, reporting his action, through the Commissioner of the Division, for the Chief Commissioner's approval. In this connection, it is important to notice that, where grants have been made to two or more persons jointly for one or more lives, and no separate shares are specified, no portion of the grant will be liable to resumption until the death of the last person entitled to privilege.

12. The holdings of Government muafidars, situated in villages of which the revenue has been assigned in whole or in part, are liable to payment of revenue on lapse or resumption, exactly as would be the case with Government muafi holdings situated in villages, the revenue of which has not been assigned. There may be some special reasons for holding that the revenue of the plot forms part of the assignment

of the revenue of the village, and such reasons would, of course, influence officers in deciding whether a lapse had occurred or a resumption was justified. But, when once it has been decided that the revenue-free grant has lapsed, or is liable to resumption, the procedure in dealing with such plots should be the same as that followed in dealing with Government muafi plots situated in villages the revenue of which has not been assigned.

13. In all cases in which a grant is resumed on the death of a muafidar, it will ordinarily be desirable, as a matter of grace, to levy revenue only from the second kist payable after the death of the muafidar, so as to give time to his heirs to make arrangements for meeting the new demand. It may occasionally happen that the liability of a grant to resumption is not discovered at the time, and in such cases it would be hard to levy arrears, unless the holder had actively concealed the liability. Ordinarily, therefore, arrears for more them one year should not be collected.

14. Reports of privileged-grants, which have lapsed and been settled by the Deputy Commissioner, or of grants, which appear liable to resumption, will be submitted, through the Commissioner of the Division, for the Chief Commissioner's orders, in Form C.

As a rule Settlement cesses have already been levied on muafi plots and collected, but in districts in which this has not been done, they will be levied when the revenue assessed is not less than Rs. 6. They will be calculated to the nearest 4 annas. The drawback allowed to the malguzar for the collection of revenue on all such plots will be 2 annas in the rupee, fractions of annas being neglected.

15. It has been seen that it is difficult to say how far an alienation will result in the resumption of the grant; and it is, therefore desirable that the public should have a means of obtaining information on the point before a transfer is actually effected. Deputy Commissioners will, therefore, in all cases, before proceeding to sell a privileged grant at the instance of a Civil Court, or on the joint application of the grantee and a private purchaser, report the case, in full detail, for the Chief Commissioner's orders. Such reports must be forwarded through the Commissioner of the Division.

Note:—(For Forms A. B. C. *and* D. *See Revenue Book Circular* Vol. II. *Section* 1 *serial* No. 2. P. 46 *to* 51).

Inspection of revenue-records.

131. All records kept under this Act shall be open to public inspection at such times, and on such conditions as to fees or otherwise, as the Chief Commissioner from time to time directs.

Rules for the Inspection of Revenue Records.

Notification No. 3500 of the 21st June 1888, as amended by Notification No. 648 dated the 12th February 1903.

1.—Subject to the rules hereinafter contained, the following records and proceedings maintained under the Land-revenue Act shall be open to inspection:—

(*a*) *Records maintained under the Land-Revenue Act—*

The Record-of-rights—section 79 of the Act; the register of Mutations—section 125 of the Act; Village Papers—section 146 of the Act.

(*b*) *Proceedings under the Land Revenue Act—*

1. Proceedings regarding claims by a thekadar to protected status under section 65-A.
2. Proceedings of a Settlement Officer under sections 68, 69, 70, 72 and 77, clauses (*b*), (*c*) and (*d*).
3. Proceedings for the recovery of arrears of revenue for malguzars under section 116.
4. Proceedings for the correction or revision of record-of-rights under sections 120 and 122.
5. Proceedings under section 123 for the enforcement of the provisions of the record-of-rights.
6. Proceedings under section 124-A regarding malguzari forests.
7. Proceedings in mutation cases and under section 127.
8. Proceedings in regard to the resumption of revenue-free grants under section 130.
9. Proceedings under sections 132, 134 and 135.

10. Proceedings for the appointment, punishment or dismissal of lambardars, sub-lambardars or lambardar-gomashtas, mukaddams or makaddam-gomashtas under section 137.
11. Porceedings for appointment, punishment or dismissal of kotwars under section 147-A.
12. Proceedings under section 161-A and 161-B.
13. Proceedings in regard to village boundary disputes.
14. Proceedings in perfect and imperfect partitions.
15. With the special sanction of the Deputy Commissioner proceedings in any other case.

Proviso.—No correspondence in English or Vernacular and no papers declared by the Deputy Commissioner or higher authority to be confidential shall be open to inspection.

II.—For the inspection of the record of a case, which is pending or which has been decided but the record of which has not been deposited in the record-room, the permission of the officer before whom the case is pending or by whom the case has been decided shall be necessary: for the inspection of the record of such a case which has been decided and the record of which has been deposited in the record-room, the permission of the Deputy Commissioner or such official as he may appoint shall be necessary. If the officer to whom the application is made refuses permission to inspect, he shall record his refusal and his reason for making it.

III.—A person other than a Government officer who has duly obtained permission to inspect the record of a case, may avail himself of it at any time during the first four hours of the days on which Revenue Courts are open, and only in such part of the office as shall be appointed by the Deputy Commissioner or head of the office.

IV.—No person other than a Government officer shall remove the record from the place appointed for inspection purposes. The use of pen or ink will not be allowed. Pencil and paper may be used for the purpose of taking such notes as may be necessary for future reference, but the making of any copy, abstract or detailed notes even in pencil is strictly forbidden. No mark may be made on any records or paper inspected.

It shall be the duty of the Record-keeper or other official appointed in that behalf to see that the above provisions are strictly enforced.

V.—Applications for inspection of records, from persons other than Government officers or duly appointed agents of Government, shall be on paper, stamped according to the scale prescribed for miscellaneous applications to a Civil Court.

Inspection fees shall be levied from the persons aforesaid at the rate of annas 8 per hour or fraction of an hour. The fee shall be prepaid in Court-fee stamps and will in no case be refunded. The stamp shall be affixed in column 6 of the register prescribed below, and cancelled in the manner prescribed in the Court Fees Act of 1870, section 30, and the officer who grants permission to inspect shall write his name across the stamp.

VI.—No inspection fees shall be charged for the inspection of any revenue records, books or registers by Government officers or other persons duly authorised in this behalf for Government purposes; or for the inspection of the reord of a pending case by a party thereto, or by any advocate, vakil, pleader or agent, who has filed an application in the case; or for the inspection of a record by any one at the request of a Revenue Officer; nor will any fee be charged for the inspection of a record called for by a Revenue Officer: Provided that should any party to a case apply to a Revenue Officer personally or otherwise that any revenue record, book or register or set of books or registers be sent for and inspected during the hearing of the case, the applicant shall, on the application being granted, pay a fee of Re. 1 in a Court-fee stamp for each such record, book or register or set of books, or registers, and the officer shall send such application together with the stamp or stamps to the Record-keeper for compliance. The Record-keeper shall affix the stamp or stamps in column 6 as directed in rule V and note on the application that he has done so. Provided also that the officer who sends for the record book, or register may remit the fee payable under this rule if he sees reason to do so.

Inspection Book.

Date.	Name of applicant for inspection.	Record, case, register or map of which inspection is sought.	Signature of officer ordering inspection.	Time occupied in inspection.	Stamps affixed.	Signature of applicant.	Remarks.
1	2	3	4	5	6	7	8

CHAPTER X.

OF CERTAIN ADDITIONAL POWERS AND FUNCTIONS OF REVENUE OFFICERS.

Purposes for which, when settlement is not in progress, Deputy Commissioner shall exercise Settlement Officers' powers.

132. The Deputy Commissioner shall, when a settlement is not in progress, exercise the powers conferred by this Act on Settlement Officers for the following purposes:—

(*a*) causing boundary-marks to be erected or repaired, and recovering the cost of such erection and repair;

(*b*) assessing land-revenue on lands which are liable to assessment, but have not been assessed;

(*c*) declaring any local area to be a mahal;

(*d*) settling lands from which the proprietors were excluded at settlement and to which they have been or are about to be re-admitted;

(*e*) settling mahals in respect of which an application has been made under the third proviso to section 56;

(*f*) dealing with claims to hold land wholly or partially free from revenue as against the malguzars;

(*g*) assessing lands gained by alluvion;

(*h*) ascertaining and recording village cesses which are levied when this Act comes into force, but have not been recorded at the settlement;

(*i*) inquiring into the claims of thekadars, gaontias or farmers, declaring them to be protected for the purposes of section 65-A, and, generally, carrying out the provisions of that section; and

(*j*) declaring, either on this own motion or on a reference made by a Court or Revenue Officer, land to be *sir*, land under the provisions of section 69, sub-section [2], clause

[*b*], and the provisos thereto.

Note:—Clauses (*i*) and (*j*) were substituted by Section 8 of the Central Provinces Land-Revenue Act 1898 (XII. of 1889) for clause (*j*) which was added by the Central Provinces Land-Revenue Act 1898 (XVI. of 1889) Section 24.

Certain powers, ordinarily exercizable by the Settlement Officers during the progress of Settlement operations, are by virtue of this Section conferred on Deputy Commissioners.

Purposes for which officers may be invested with Settlement Officers' powers.

133. The Chief Commissioner may, during the currency of a settlement, invest any officer with the powers conferred on a Settlement Officer by section 40, 41 and 42; or,

with the sanction of the Governor-General in council, with any other of the powers which are by this Act conferred on a Settlement Officer; but not so as to enable him to enhance the amount of an assessment in force under section 56.

Cognizance of, and penalty for, offence of injuring boundary-marks.

134. Any person wilfully erasing, removing or damaging a boundary-mark may be ordered by the Deputy Commissioner or by a Tahsildar or Naib-Tahsildar empowered by the Chief Commissioner in this behalf to pay to the officer making the order, in addition to any fine to which such person would be liable under section 434 of the Indian Penal Code, such sum, not exceeding fifty rupees, as may, in the opinion of such officer, be necessary to defray the expense of restoring same, and of rewarding the person [if any] who gave information of such erasure, removal or damage.

XLV of 1860.

Note:—Section 434 of the Indian Penal Code provides as follows:-

"Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any Act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

Procedure when person injuring cannot be found

135. Whenever the person erasing, removing or damaging such mark cannot be discovered, or if for any other reason it is found impracticable to recover from him the sum which he has been ordered to pay, the mark shall be re-erected or repaired at the cost of the proprietors, mortgagees or farmers [or, in the case of regularly-settled ryotwari villages, of the ryots] of such one or more of the adjoining lands as the Deputy Commissioner thinks fit.

136. [Partition of a mahal into two mahals]—Rep. by Act XVI of 1889, section 26.

CHAPTER. X—A.

PARTITION.

Note:—This chapter has been inserted by the Central Provinces Land-Revenue Act XVI. of 1889, Section 26.

"Partition" means the division of a *Mahal* or of a part of a *Mahal*, into two or more portions each consisting of one or more shares. In "imperfect partition" several portions remain jointly responsible for the revenue assessed on the whole *Mahal*. In "perfect partition" the whole *Mahal* is divided and the several portions become separate *Mahals*, each severally responsible for the revenue distributed thereon [N. W. P. and Oudh Revenue Act VII. of 1901 Section 106]

Perfect and Imperfect Partition.

Perfect and imperfect partition.

136. (1) Partition is either perfect or imperfect.

(2) Perfect partition means the division of a mahal into two or more mahals.

(3) Imperfect partition means the division of a mahal into two or more pattis, jointly responsible for the revenue assessed on the whole mahal.

Notes:—*Partition of Estate or separation of share*:—1. If the decree be for the partition or for the separate possession of a share of an undivided estate paying revenue to Government, the partition of the estate or the separation of the share shall be made by the collector and according to the law [if any] for the time being in force for the partition, or the separate possession of shares, of such estate (Section 265 of the Code of Civil Procedure, Act XIV of 1882).

2. When the decree is not for partition of the family property, but for the separate possession of a share, *Held*, that this section [S. 265 Civil Procedure Code] was inapplicable. (I. L. R. 10. Calcutta 435 Secretary of State vs. Nandan Lal. I. L. R. 7. Calcutta 153 approved).

3. Section 265, Civil Procedure Code does not apply to property held on ryotwari tenure, but to permanently settled estates [I. L. R. 6. Madras, 97 Mutta vs. Kudilaliga—approved in I. L. R. 7. Madras, 382 F. B.]

Civil Court's powers to effect a partition:—The Civil Courts cannot partition an entire estate into several revenue-paying estates. But it can partition the lands of the estate, provided that there is no allottment of the revenue and that the entire lands comprised in the estate continue liable as before for the entire revenue (I. L. R. 24 Calcutta, 725 F. B. Jagadishury Debea Vs. Kailaschandra (8. C. L. R. 367. and I. L. R. 23 Calcutta 679, overruled). see also I. L. R. 16 Calcutta 203 F. B. I. L. R. 15 Calcutta 198.

2. Under Section 265 Civil Procedure Code, a Civil Court can

not effect partition of lands paying revenue to Government, the Collector alone is empowered under that Section to do so (I. L. R. 16 Bombay, 528 Dattatiya Vithal vs. Mahadaji).

3. The duty of the Collector, to whom a decree has been referred under Section 265, Civil Procedure Code, for partition, is not confined to mere division of lands decreed to be divided, but includes the delivery of the shares to their respective allottees (I. L. R. 11. Bombay, 662,)

4. Where a decree for partition of an estate has been transmitted by the District Court to the Collector for execution under Section 265, Civil Procedure Code, the court that made the decree is not deprived of its judicial power to hear and decide objections to the division of the estate made by the Collector [I. L. R. 19. Madras, 435] But the Bombay High Court has held that when the Collector makes a partition under Section 265, Civil Procedure Code, the Civil Court has no power to examine his work or to direct him to make a fresh partition [I. L. R. 15. Bombay 527 Srinivas Harimant vs. Guru Nath and I. L. R. 12. Bombay, 371]

Private partition:—1. A private partition, though not sanctioned by official authority, will, if full and final as among the parties to it, has the same effect as the most formal partition on the right of pre-emption [2. W. R. P. 47 Gopal Sahai vs. Ajodhya Prashad]

2. A private partition of a joint estate is not inconsistent with subsequent survey proceedings, and does not take away their legal effect [10. W. R. P. 336 Hanuman Chowbay vs. Bindhoo Turaba]

3. There is no distinction between a private partition and an imperfect partition officially made under the Land-Revenue Act (C. P. L. R. VII. 137 Babusing vs. Jaitlal and Lahorising).

Partition of buildings &c.:—In a partition neither buildings nor materials thereof can be partitioned; what is partitioned is the land in the *mahal*. When such land is covered with buildings, the Court making the partition has to follow the provisions of Section 124 [Act XIX of 1873];but it can decide no question of right to the buildings, nor can it partition them (W. N. 1900 P. 116 Asaq Husain vs. Mohammad

Jan). But in the case of *Nawab Mohammad Ishaqkhan* vs. *Mst: Anjuman-un-nisa* the Board of Revenue N. W. P. have held that a *Painth, Bazar* or *Parao* can be partitioned according to the agreement made by the parties (B. D. No. 55 of 1900, Azizuddin's N. W. P. and Oudh Revenue Act) also that trees growing upon land, the subject of partition by the Revenue authorities, go with the land, and may propose to be partitioned along with it by Revenue authorities (W. N. 1901 P. 86 Mohamad Siddiq vs. Sante Ram).

Unequal shares of sir and khudkasht land:—As pointed out in Kalee Pershad vs. Shah Latafut Hossein (XII. W. R. 438) if a co-sharer in an undivided estate holds a portion of land larger than his share either as being greater in extent or greater in value, the inequality may be remedied by a partition (C. P. L. R. XIII at page 49 Lachman Ram vs. Munnalal and Raghunath).

If the Plaintiff is in *khas* possession of less land than he is entitled to and if the Defendant will not make the shares equal, the remedy is by partition (C. P. L. R. IX at page 82 Ratan Teli vs. JadoRao).

Effect of private partition:—1 In this case there had been a private partition by metes and bounds, some years ago, of a village and the possession of the different shares remained with the co-sharers to whom they were respectively allotted until some of them interfered with the arrangement by suing some of the plaintiff's tenants. The plaintiffs sued for a declaration that certain fields specified in the plaint should be declared to be their separate fields and that possession of those fields should be given to them. *Held*, that sections 136 and 152 of the Land Revenue Act do not bar this suit as there was no question of suing or applying for the partition of a mahal, nor is there any question of the distribution of the land or allotment of the revenue of a mahal by partition. [Sujanmal vs. Mst: Bhagabai 6, C. P. L. R. page 103].

2. Where a recorded co-sharer in a village has given up all claim to his share in that village in consideration of his holding exclusive possession of another village belonging to the family, the possession of the Lamberdar in the former village is not possession

on behalf of that co-sharer. (Sheoba vs. Simaria 2 C. P. L. R. 171 *distinguished*). Where such an arrangement is said to have had its origin in a partition made before the first settlement, the fact of that partition is relevant, though the interests which existed in the villages before the settlement may not have been identical in nature and extent with those created in it (Dasroo, Neoo and Kashi vs. Anant Ram and Daddi XI C. P. L. R. 30).

3. No single co-sharer can arrogate to himself the right to collect the rents of the village where there has been no partition (Note The ruling in VII C. P. L. R. page 137 *explained*). Partapsingh Rajpoot vs. Umraosingh and Himmatsingh XI. C. P. L. R. 1.

Persons entitled to imperfect partition.

136-A. Any recorded co-sharer of a mahal and any person in whose favour a decree has been passed awarding to him a proprietary interest in a mahal, whether such interest consists of a fractional share in the whole mahal or a part of the mahal or of specific lands, is entitled to claim at any time imperfect partition of his share.

Note:—The analogous provision in the N. W. P. and Oudh, Revenue Act runs to the following effect:—" An application for partition shall be accompanied by a certified copy of the annual register of proprietors prescribed by Section 33, and may be presented by one or jointly by two or more of the recorded co-sharers of a Mahal-Provided that when a share is in possession of a mortgagee, no application for partition by either mortgagor or mortgagee shall be entertained unless both have joined in such application-" (Section 107).

The word " co-sharer " in the above Section relating to the partition of *mahals* does not include the representatives of a co-sharer, such as a mortgagee (W. N. IX. P. 169. Kishenlal vs. Rupchand and another).

The mere fact of possession based on false claim is not sufficient to maintain a suit for partition [I. L. R. VIII. Allahabad P. 1 Parbati vs. Sunder)

A mortgagor out of possession cannot apply for partition (B. S. D. 1892 Jowharimal vs. Habibullakhan).

A childless Hindu widow, who is recorded as a co-sharer of a *mahal*, is as much entitled under Section 108 of Act XIX of 1873 (corresponding with Section 107 of the new N. W. P. and Oudh, Revenue Act III. of 1901) as any other recorded co-sharer is, to claim a perfect partition of her share. The circumstance that she may after partition alienate her share contrary to Hindu Law will not bar her right as a co-sharer to partition (I. L. R. III. Allahabad 400, Jhuna Kuar vs. Chainsukh).

Persons entitled to perfect partition.

136-B. Any recorded co-sharer in a mahal, not being a mahal—

[*a*] in the Sambalpur District, or

[*b*] held by superior and inferior proprietors and which the Chief Commissioner by rule declares to be incapable of perfect partition,

whose share, saving such part of it as may be impartible, has been completely separated from the rest of the mahal and is held by him in severalty is entitled to claim perfect partition of his share at the time of settlement of such mahal.

Note—A careful reading of this as well as the last preceding section would show that a co-sharer whose name is recorded in the Register of Proprietory Mutations maintained by the Collector under Section 125 of the Act, is entitled to claim imperfect partition of his share It follows that a person having obtained a duly registered sale deed in respect of a share in a mahal but who is not recorded in the Collector's

Register as a co-sharer, is not but, a recorded co-sharer possessing no title deed, is entitled to apply for partition. Even a decree holder must obtain execution of his decree and mutation of names before he can be allowed to apply for partition in a Revenue Court.

2. In all cases of mortgage with possession, and cases in which a lease is given for a longer period than a year mutation proceedings are required to be instituted under Section 126, of the Central Provinces Land-Revenue Act and the name of the mortgagee or lessee is entered in the register of the proprietary mutations in addition to—not in place of, the name of the proprietor (see Central Provinces Revenue Manual Vol. I. P. 118) Lessees and mortgagees jointly with their mortgagors and lessors will thus be regarded as " recorded co-sharer " within the meaning of this Section and both of them must join together in presenting applications for partition.

3. It has been held by the Board of Revenue, N. W. P. that an application for the partition of a Mahal made by a mortgagor out of possession against the wishes of the proprietors in possession may properly be refused (B. S. D. No. 18 of 1892 Jowharimal vs. Habibullah)

Jurisdiction of Civil Court barred as to partition.

136 C. No Civil Court shall entertain any suit or application for the imperfect or perfect partition of a mahal.

Note:—1. A Civil Court is not debarred from decreeing partition of a revenue-paying estate at the instance of a Hindu widow, if proper case for passing such a decree be made out by her (I. L. R. 9. Calcutta 244, Mahadevi Koonar vs. Haruk Narain). But the mere fact of possession based on false claim is not sufficient to maintain a suit for partition (I. L. R. Allahabad, VIII, P. 1. Parbati vs. Sunder).

2. This chapter does not apply to the partition of occupancy holdings. A joint occupancy tenant is entitled to sue for partition, and a Civil Court is competent to grant a decree for partition of the joint occupancy holdings, though, if the zamidar is not made a party to the suit for partition, such decree will not effect the mutual rights and liabilities of the zamidar and the occupancy tenants as they stood prior to the

partition [W. N. XVI. 1882 Mohammad Baksh and others vs. Manna and others].

3. In this case there had been a private partition by metes and bounds, some years ago, of a village and the possession of the different shares remained with the co-sharers to whom they were respectively allotted until some of them interfered with the arrangement by suing some of the Plaintiffs' tenants. The Plaintiffs sued for a declaration that certain fields specified in the plaint should be declared to be their separate fields and that possession of those fields should be given to them. *Held*, that Section 136 (c) and 152 of the Land Revenue Act do not bar this suit as there was no question of suing or applying for the partition of a *Mahal*, nor is there any question of the distribution of the land or allotment of the revenue of a *Mahal* by partition [C. P. L. R. VI. 103 Sujanmal, Sheodas vs. Mt: Bhagubai, Ganoba and Yeswantrao].

4. The Plaintiff, a purchaser of an eight anna share in the village of Sambalpuri, sued to recover *khas* possession of half the *sir* and *Khud kast* land. *Held*, that such a suit would not lie and that the claim is bad, since the decree obtained, which would involve a redistribution of land, is incapable of execution. If the Plaintiff is in *khas* possession of less land than he is entitled to and if the Defendants will not make the shares equal, the remedy is by partition. A Civil Court has no jurisdiction in such matters (C. P. L. R. IX. 81 at Page 82 Raton Telt vs. Yado Rao).

5. As pointed out in Kalu Porshed vs. Shah Latafat Hossein (XII W. R. 418) if a co-sharer in an undivided estate holds a portion of land larger than his share either as being greater in extent or greater in value, the inequality may be remedied by a partition [C. P. L. R. XIII Page 49 Lachman Ram vs. Munnalal and Raghunath).

Imperfect Partition.

Application for imperfect partition to be made to Deputy Commissioner.

136-D. (1) Applications for imperfect partition shall be made in writing to the Deputy Commissioner of the district in which the mahal is situate.

(2) If the mahal is situate in two or more districts, the application may be made in any one of those districts, and the partition shall be made by such one of the Deputy Commissioners of those districts as the Chief Commissioner may direct.

It should be noted that applications for perfect partition are to be made to the Settlement Officer during the progress of the Settlement operations in the District in which the village to be partitioned is situate, whereas applications for imperfect partition can be made at any time to the Deputy Commissioner of the District or to Assistant Commissioner or Extra Assistant Commissioner exercising the powers of a Deputy Commissioner under the Land Revenue Act.

Procedure on receipt of application.

136-E. (1) The Deputy Commissioner on receiving an application for imperfect partition shall, if the application be in order, and not open to objection on the face of it, publish a notification of the same at his office and at some conspicuous place on the mahal to which the application relates, and shall serve a notice on all such of the recorded co-sharers in the mahal as have not joined in the application, requiring any co-sharer in possession, who may object to the partition, to appear before him to state his objection either in person or by a duly authorized agent on a day to be specified in the notice, not being less than thirty or more than sixty days from the date on which such notice was issued.

(2) Where from any cause notice cannot be personally served on any co-sharer, the notification shall be deemed sufficient notice under this section.

Note.—1. Forms of applications for perfect and imperfect partition will be found attached to Rules framed by the Chief Commissioner under Section 136 V.

2. The corresponding section 110 in the N. W. P. and Oudh Revenue Act III of 1901 runs as follows:—

> " The Collector, on receiving an application for partition, shall, if it is in order and not open to objection on the face of it, issue a proclamation calling on such of the recorded co-sharers in the mahal as have not joined in the application to appear before him, either in person or by a duly authorized agent, on a day not less than thirty or more than sixty days from the date of the issue thereof, and to state their objection [if any] to th partition. A copy of the proclamation, shall if possible, be served on each co-sharer personally."

It is important to note that in the above section the word " proclamation ", has been used, whereas in the section 136 E of the C. P. Land Revenue Act the word " notification " appears.

Objection to partition.

136-F. If on or before the day specified any objection is made to the partition by any co-sharer in possession, and the Deputy Commissioner on a consideration of such objection is of opinion that there is good and sufficient reason why the partition should be absolutely disallowed, he may refuse the application, recording the grounds of his refusal.

Note:—1. It has been held by the Board of Revenue N. W. Provinces in Bhikhamsingh vs. Chimansingh (B. S. D. 1893 P. 61) that when a Collector is satisfied that the circumstances of the mahal are such and the shares of land to be allotted are so petty and so divided that, administratively it is not desirable that partition should be made, he may stay the partition.

2. An application for partition of a mahal made by a martgagor out of possession against the wiches of the proprietors in possession,

may properly be refused. Jheubri Mal vs. Habibullah (B. S. D. No. of 1892).

3. A partition case can not be struck off the file by a Revenue Court because the applicant for partition, though prepared to pay his rateable share of the costs, objects to pay the costs payable by other parties. Such costs should be realized in accordance with the procedure laid down in the Act from persons by whom they are payable (Mukhan lal vs. Akbar Hosein L. R. II. P. 59).

4. A partition can not be refused on the ground that on the death of the applicant a fresh partition will probably take place between his successors (Daya Ram Sing vs. Ram Sing B. F. No. 321 of 1891.)

Objection raising question of title.

136-G. [1] If the objection raises any question of title or of proprietary right which has not been already determined by a Court of competent jurisdiction, the Deputy Commissioner may either decline to grant the application until the question in dispute has been determined by a competent Court or may proceed to enquire into the merits of the objection.

[2] In the latter case the Deputy Commissioner, after making the necessary enquiry and taking such evidence as may be adduced, shall record a judgment declaring the nature and extent of the interests of the party or parties applying for the partition, and of any other party or parties who may be affected thereby.

[3] The procedure to be observed by the Deputy Commissioner in trying such cases shall be that laid down in the Code of Civil Procedure for the trial of original suits, and he may with the consent of the parties refer any question arising in such case to arbitration,

XIV of 1882. and the provisions of Chapter XXXVII of the same Code relative to arbitration shall apply to such references.

Note:—Under this section if a non-applicant in a partition proceeding raises any question of title or proprietary right, two courses are open to the Revenue Officer. He may either stay the proceeding and refer the parties to the Civil Court or he may as a Revenue Officer proceed to enquire into the merits of the objection. But if he elects to take the latter course he does not thereby convert himself into a Civil Court, and it is perfectly immaterial whether he has or has not been invested with the powers under the Civil Courts Act 1885. He is bound to observe the procedure laid down in the Code of Civil Procedure for the trial of original suits and any decree passed by him shall be *held or deemed to be* the decree of a Court of Civil Judicature and shall be appealable *as if passed* by the Court of the Deputy Commissioner acting as the Court of Civil Judicature of first instance (15 C. P. L. R. at page 83 *Jaffer Hussain* vs. *Abdul Kadir* and others).

2. The value for the purposes of jurisdiction of a suit for partition is not the value of the entire property but the value of the share in respect of which partition is sought. [15 C. P. L. R. at P. 84].

3. Any question of title or proprietary right such as referred to in Section 136 G. must be enquired into and determined by an Officer who has been empowered to effect a partition. The provision in sub-Section 3 that the procedure to be observed in trying such cases shall be that laid down in the Code of Civil Procedure for the trial of original suits would certainly seem to prohibit the reference of any such question even to a qualified subordinate for investigation and report [*Kokvath Dube and another* vs. *Bisesar Dube and* others, 15 C. P. L. R. at page 155.]

3. Section 111 of the N. W. P. and Oudh Revenue Act III. of 1901 (Section 113 of the old Act of 1874) enacts as follows:—

(1) If on, or before, the day so fixed, any objection is made by a recorded co-sharer, involving a question of proprietary title which has not been already determined by a Court of competent jurisdiction, the Collector may either:—

(a) decline to grant the application until the question in dispute has been determined by a competent Court, or

(b) require any party to the case to institute within three months a suit in the Civil Court for the determination of such question, or

(c) proceed to inquire into the merits of the objection.

(2) When the proceedings have been postponed under clause [b], if such party fails to comply with the requisition, the Collector shall decide the question against him. If he institutes the suit, the Collector shall deal with the case in accordance with the decision of the Civil Court.

(3) If the Collector decides to enquire into the merits of the objection, he shall follow the procedure laid down in the Code of Civil Procedure for the trial of original suits."

The following rulings of the Allahabad High Court under the above Section will be found both interesting and useful:—

1. The procedure provided by Section 113 of Act XIX of 1873, does not become obligatory on the Collector or an Assistant Collector in partition proceedings unless an objection to the partition has been made by the co-sharer in possession and unless such objection was made before the day specified in the notice which the Collector or Assistant Collector is bound to issue under Section 111. Act XIX. 1873, and not even then, unless such objection raises a question of title. Unless, therefore, such objection has been made, a Civil Court is not empowered to exercise any jurisdiction in the matter of the distribution of the land or the allotment of the *mahal*, by partition. [*Hardeo Singh* vs. *Narpat Singh*. I. L. R., 20, Allahabad P. 75].

2. A Revenue Court acting under the provisions of Sectious 112 and 113 of the Land Revenue Act (XIX of 1873) recorded a proceeding declaring the nature and extent of the respective rights of the parties before the Court, and prescribing the mode in which partition should be effected. No decree was framed in accordance with this proceeding. *Held*, that the proceeding of the Revenue Court was a decision by a Court of competent jurisdiction, and could not be interfered with by a suit in the Civil Court disputing its correctness. (*Bhola vs. Ramadhin* I. L. R. VII. All. P. 894.)

3. A childless Hindu widow who has succeeded to her deceased husband's share of a *mahal*, such share having been his separate property, and is recorded as a co-sharer of such *mahal* is as much entitled, under section 108 of XIX of 1873, as any other recorded co-sharer is, to claim a perfect partition of her share. The circumstance that she may after partition alienate her share contrary to Hindu Law, will not bar her right as a co-sharer to partition. If she acts contrary to the Hindu Law in respect of her share, the reversioners will be at liberty to protect their own interests. (*Jhunna Kunver vs.* Chainsukh I. L. R. III. All. P. 400).

4. Where a sharer urged that the land held by him in severalty should be taken for the purposes of partition as the measure of his share in that held in common. *Held*, that this is not a question for decision under Section 113, but one which should be decided by the Collector before drawing up the partition proceeding. (*Gulam Hyder Khan vs. Gulab* L. R. II. P. 74).

5. Where in the course of carrying out an order for a partition and of assigning the lands to each co-sharer, certain co-sharers claim certain plots of land as belonging to them in severalty and demanded that the same should be assigned to them, and the Collector decided that some of such plots were held in severalty and one was held in common. *Held*, that this decision was not passed under Section 113 of Act XIX

of 1873 and was therefore not appealable under Section 114 (*Shibanlal vs. Trilockichand* I. L. R. II. All. P. 619).

6. Where in proceedings for partition under Act, XIX of 1873, a question of title to land is raised between the parties to the partition, and there is an adjudication of such question, such adjudication will operate as a bar to a suit between the same parties in the Civil Court to contest the title of such land, notwithstanding that in some respects such adjudication may have been irregular or defective. (*Harshaimal* vs. *Maharajsingh* I. L. R. XI, Allahabad, P. 294 and *Jageshwar Miser* vs. *Ghansyam Miser* W. N. 1881. P. 130 followed.) *Held*, also in this case, on considration of the partition proceedings, that the question of title raised therein had been adjudicated on, and therefore the rule mentioned above applied. (*Bateser Nath* vs. *Faizul Hussain*, I. L. R. V. Allahabad P. 280).

In the case of an objection to a partition raising a question of title it is only when the Collector or Assistant Collector records a proceeding declaring the rights of the parties after an adjudication of the objection on its merits, that his order becomes an order under Section 113 of Act XIX of 1873 within the meaning of Section 114 of that Act. Where therefore an Assistant Collector made an order disallowing an objection to a partition raising a question of title, on the ground that such questions had been determined against the objector in a suit for profits between the parties, *held* that such order was not a decision of a court of Civil judicature within the meaning of Section 114 of Act XIX of 1873, but that it could be contested by a suit in the civil court (*Rameshar Rai* vs. *Subba Rai*; *Bakhta* vs. *Ganga*; Har *Shaimal* vs. *Maharaj Singh*—*distinguished* Atgar Ali vs. Jhanda Mal I. L. R. II. All. p. 839).

The failure of one of the parties to an " imperfect " partition to raise a possible objection to the title of one of the other parties to the partition can not have the effect of *res-judicata* in a subsequent civil suit between the parties, as would be the case where there had been a " perfect partition," and a decision of the court of Revenue under section 113 of Act XIX. of 1873, (*Harcharansing vs. Harshanker Sing* I. L. R. XVIII. All. P. 59 referred to. *Aisha Begam vs. Abdulla Khan*, W. N. 1899. P. 190).

Effect of Deputy Commissioner's orders in such cases and appeals therefrom.

136-H. (1) All decrees and orders passed by the Deputy Commissioner under the last foregoing section deciding the rights of parties shall be held to be decrees and orders of a Court of Civil Judicature, and shall be open to appeal as if passed by the Court of the Deputy Commissioner acting as a Court of Civil Judicature of First Instance under the Central Provinces Civil Courts Act, 1885.

XVI of 1885.

(2) Upon such appeal being made, the Court of appeal may issue a precept to the Deputy Commissioner directing him to stay the partition pending the decision of the appeal.

Note:— 1. It is necessary to prepare a formal decree in proceedings under section 113 (N. W. Revenue Act) declaring the rights of the parties in a partition case (W. N. 1888 P. 151 Ranajit Sing vs. Ilahi Baksh and others).

2. A Revenue court acting under the provisions of Sections 112 and 113 of the N. W. P. Land Revenue Act (XIX of 1873) recorded proceeding declaring the nature and extent of the respective rights of the parties before the court, and prescribing the mode in which partition should be effected. No decree was framed in accordance with this proceeding. *Held* that the proceeding of the Revenue Court was decision by a court of competent jurisdiction and could not be interfered with by a suit in the civil court disputing its correctness. (*Bhola* and others vs. *Ram Adhin* and others I. L. R. VII. All. P. 894).

3. When a Collector or Assistant Collector has determined to inquire into objection raising questions of title under Section 113, of the N. W. P. Land Revenue Act, his proceeding thereupon must be

conducted as an original suit in the Civil Court. It is essential that in a suit under the Civil Procedure Code a decree should be drawn up (*Ranjit singh vs. Ilahi Baksh W.N. III. P. 151*).

Second appeal in such cases.

136-I. From any decree or order passed under the last foregoing section by a Commissioner sitting as a Court of appeal, a second appeal shall, where a second appeal is by law allowed, lie to the Court of the Judicial Commissioner under the law for the time being in force, relating to second appeals to that Court.

Where a partition was referred to arbitrators and only one of the three arbitrators conducted the partition without the consent of his colleagues, it was held by the Board of Revenue N. W. P. that the award was bad. [*Mt. Kandia vs Baldeo Perthad* 3. S. D. 19].

Option to parties to make partition themselves or appoint arbitrators.

136-J. When it has been decided to make a partition under this Chapter, the Deputy Commissioner may give the parties the option of making the partition themselves or of appointing arbitrators for the purpose, or he shall make the partition himself.

Proceeding to be recorded by the Deputy Commissioner before making partition.

136 K. Before commencing to make the partition the Deputy Commissioner shall record a proceeding specifying the lands held in severalty, if any, and the land held in common, and laying down the principles to be followed in making the partition, with particulars of the method on which such principles are to be applied.

Each patti to be made as compact as possible.

136 L. (1) The patti of each sharer shall be made as compact as possible:

Provided that, so far as may be compatible with fairness of partition, lands held in severalty shall be left in the possession of the parties holding the same.

(2) No partition shall be disallowed solely on the ground of incompactness.

Rule when house of one sharer is included in the patti of another.

136-M. [1] If in making the partition it be necessary to include in any patti the land occupied by a dwelling-house or other building in the possession of another co-sharer, such other co-sharer shall be allowed to retain it, with any buildings thereon, on condition of his paying a reasonable ground-rent for it to the sharer into whose patti it may fall.

[2] The limits of such land and the rent to be paid for it shall be fixed by the Deputy Commissioner.

Note:—(1) On partition of a certain *mahal* between A and B, a certain plot having a *chabutra* belonging to A fell to the share of B without any condition or reservation. Held, that B was entitled to bring a suit for removal of the *chabutra*. [*Fulchand vs. Bhola Nath* W. N. III, P. 136.]

(2) It is not within the jurisdiction of a Court of Revenue to partition a "*chhaoni*" or collection house. (*Sheo Devi vs Harbans Narian* W. N. 1882 P. 80) as to this point, followed [*Abdul Rahman vs. Mashina Bibi* W. N. 1889, P. 49.]

(3) In a partition neither buildings nor materials thereof can be partitioned. What is partitioned is the land in the *mahals*. When such land is covered with buildings, the court making the partition has to follow the provisions of section 124 (Act XIX of 1873), but it can decide no question of right to the buildings nor can it partition them. (*Ashiq hosein vs Mohammad Jan* W. N. 1900 P. 116).

Sir land belonging to one sharer not to be included without his consent in the patti of another sharer.

136-N. (1) No *sir* land belonging to any co-sharer shall be included in the patti assigned on partition to another co-sharer unless with the consent of the co-sharer who cultivates it, or unless the partition cannot otherwise be conveniently carried out.

(2) If such land be so included and after partition such co-sharer continue to cultivate it, he shall be recorded as an occupancy-tenant in respect of such land, and his rent shall be fixed by order of the Deputy Commissioner.

Note.—The following ruling of the Chief Commissioner on the interpretation of sections 136-L and 136-N of the Land-Revenue Act, relating to imperfect partitions, is published for general information.

1. The ruling is an important one, as laying down that the partitioning officer has the power of rectifying an arrangement by which one of a number of co-sharers has succeeded in appropriating to his own cultivation an unfair share of the *sir* lands of a mahal, in all cases where the appropriation does not constitute exclusive ownership lawfully acquired with the consent of his co-sharers.

2. Where such ownership has been acquired over *sir* land, it may still, under the circumstances described in section 136-N (1), be allotted to the patti of another co-sharer; but in that case the former owner is entitled to continue in possession of it as an occupancy tenant and is of course entitled to proprietary profits from other land equivalent to those he has lost by the partition.

3. It need scarcely be added that where the applicant for the partition has acquired by purchase a proprietary share without expressly acquiring the right to cultivate the *sir* land, the provisions of Section 45 of the Tenancy Act act as a bar to his being allotted cultivating possession of any *sir* land, and if such *sir* land falls into his proprietary patti, the ex-proprietor must, by the operation of Section 45, become an occupancy tenant.

Ruling by the Chief Commissioner in a case of imperfect partition explaining the meaning attaching to the words 'held in severalty by a co-sharer', section 136-L, and 'belonging to a co-sharer,' section 136-N, of the Land-revenue Act.

There is a distinction between the terms "land *held* in severalty by a co-sharer" and "belonging to a co-sharer" as used in Sections 136-L and 136-N of the Land-revenue Act. The word "belonging" must be interpreted literally in the ordinary acceptation of the terms as referring to exclusive ownership and the terms "*sir* land belonging to a co-sharer," must denote the "*sir* land" of which that co-sharer is exclusive proprietor, *i. e.*, land which has ceased to belonging to the joint estate.

Such would be the case when a co-sharer accepted a *sir* field out and out in lieu of the proprietary profits attaching to his share in the mahal or when all the co-sharers have formally apportioned the *sir* land among themselves and are no longer responsible to the lambardar or to each other for the distribution of proprietary profits of the lands in proportion to their shares in the mahal; or again, a co-sharer may have lawfully purchased, with the consent of his co-sharers, the exclusive ownership of particular *sir* land from the proceeds of his self-acquired property.

In all the above cases the lands in question have ceased to belong to the joint estate and may be said to belong to the co-sharers in possession of them.

There may, however, be many cases of *sir* land held in severalty by a particular co-sharer which does not belong to him in the sense explained above. The sharers in a mahal may have made a distribution of sir land for the sake of convenience of management, each paying to the lambardar the rental value of the particular land he holds, and receiving back from the common balance a share of the proprietary profits in proportion to his share in the mahal not in proportion to the rental value of his land : or again a co-sharer may break up waste and acquire sir right in a piece of banjar, in which case, he will be holding the *sir* land in severalty, though it will not belong to him in the state of being in his exclusive ownership. Had it been the intention of the Legislature that the provisions of Section 136-N should apply to lands merely held in severalty that expression must certainly have been repeated in that Section. It cannot, therefore, be held that the *sir* land which is held in severalty by a co-sharer in a mahal will, as a matter of course, be considered as belonging to him within the meaning of Section 136-N of the Land-Revenue Act, otherwise it would be impossible for a co-sharer to obtain a fair share of the *sir* land of a mahal. The distribution of the *sir* land would depend not upon the right of the co-sharers, but on the wish of the strongest co-sharer, and no redress would be possible. This would certainly be foreign to the intention of Section 136-L of the Act, which merely lays down that any existing apportionments of the cultivating possession of land should not be disturbed when they are compatible with a fair partition. [*Proceedings of the Chief Commissioner, Central Provinces, in the Revenue Department, No. 5175, dated the 7th December, 1895*].

Note. A co-sharer whose *sir* land is included at partition in the Patti assigned to another co-sharer, has a right to continue to cultivate such land without the consent of the other co-sharer, and has in respect of it, an ex-proprietary tenancy which comes into existence by operation of law [C. P. L. R. X. 6.].

II. The object of the first Sub-section seems to be that both the proprietary right and the right of cultivation in particular *sir*-land shall, as far as possible, be continued to the co-sharer who has, up to the time of the partition, enjoyed possession of that land. The object of the second sub-section is that where this cannot conveniently be done, or where the co-sharer consents to give up his proprietary interest in that particular land, the continuance of his right of cultivation shall at least be secured to him by making him in respect of that land a tenant of a favoured class, that is, an occupancy-tenant. [C. P. L. R. X. at P. 8. *Mt: Janki* and *Dhundi* vs. *Natthu* and others].

III. After an imperfect partition has been effected the mutual rights of the co-sharers depend on the partition and the intentions of the partitioning officer as evidenced by the partition proceedings.

After partition the Civil Courts cannot determine the rights of the co-sharers under Section 136-N (2) of the Land-Revenue Act. That section is a rule for the guidance of the partitioning officer and must be read with Section 152 (b) [18 a] of the Act. Both Sections refer to the action of the Deputy Commissioner when making the partition. Neither of them refers to the wish of the co-sharers or gives him an option in the matter [XII C. P. L. R. at P. 137. *Bhanidas markari vs. Bhagwant Atmaram (Minor) through Laxman Gobind*].

Rule as to tanks, wells and other irrigation works.

136-O. (1) Tanks, wells, water-courses and embankments shall be treated as attached to the land for the benefit of which they were originally made.

(2) Where, from the extent, situation or construction of such works, it is found necessary that they should continue the joint property of the proprietors of two or more of the pattis into which the mahal may be divided, the Deputy Commissioner shall determine the extent to which the proprietors of each patti may make use of the said works, and the proportion of the charges for repairs of such works to be borne by such proprietors respectively, and the manner in which the profits, if any, derived from such works shall be divided.

Rule regarding places of worship and burial grounds.

136-P. (1) Places of worship and burial-grounds held in common previous to the partition of a mahal shall continue to be so held unless the parties otherwise agree among themselves.

(2) In such cases they shall state in writing the agreement into which they have entered, and such writing shall be filed with the record.

Deputy Commissioner may dismiss case for non-payment of costs or may quash proceedings.

136-Q. [1] If the costs to be paid by the applicant for partition are not paid within a time to be fixed by the Deputy Commissioner, the case may be dismissed.

[2] If at any stage of the proceedings there appears to be any reason for stopping the partition, the Deputy Commissioner may stay the partition and order the proceedings to be quashed, recording his reasons for so doing.

Note:—A partition case cannot be struck off on the ground that the applicant though willing to pay his share of costs, is unwilling to pay the proportionate share of others, such costs should be realized as arrears of revenue [*Makhan Lall vs. Akbor Husan* L. R. II P. 54.]

Commissioner's sanction to partition necessary.

136-R. On completion of the partition the Deputy Commissioner shall submit the proceedings to the Commissioner, who may either uphold the partition proposed or modify it or quash the proceedings; and a partition shall not take effect until it has been sanctioned by him.

When partition sanctioned, notification to be published.

136-S. [1] On a partition being sanctioned by the Commissioner, the Deputy Commissioner shall publish a notification of the fact at his office and at some conspicuous place in the village or villages of the mahal of which the partitioned pattis formed part.

[2] The partition shall take effect from the first

day of the agricultural year next after the date of such notification.

Perfect Partition.

Applications for perfect partition to be made to Settlement Officer.

136-T. (1) Applications for perfect partition shall be made, in such form as may be prescribed by the Chief Commissioner, to the Settlement Officer charged with the settlement of the area in which the mahal is situate.

(2) Such applications must show that the share which it is desired to have formed into a separate mahal is already held in severalty saving such portion of it as may be impartible. An application failing to show this shall be rejected.

Settlement Officer may declare shares in mahals to be separate mahals.

136-U. (1) Subject to any rules which may be made by the Chief Commissioner, the Settlement Officer, if he is satisfied of the truth of the matters stated in the application, may, if he thinks fit, declare the share to be a separate mahal, and may assess it separately to land-revenue:

Provided that no share shall be declared to be a separate mahal till the proprietors of other shares in the mahal have been given an opportunity of objecting to its perfect partition.

(2) Except with the sanction of the Commissioner, an incompact estate shall not be declared to be a separate mahal.

Supplemental Provisions

Power to make rules regarding partition proceedings.

136-V. The Chief Commissioner may make rules regarding

(*a*) the form in which applications for partition shall be made,

(*b*) the procedure to be followed in referring matters to arbitrators and in giving effect to the award of arbitrators;

(*c*) the costs of partition and the mode in which costs are to be apportioned; and

(*d*) generally, for carrying out the provisions of this Chapter.

Rules for Perfect Partition.

Notification No. 5523, dated 1st September 1890.

1. When the proprietary rights in a mahal have, under the award of a Settlement Officer, been sub-divided into superior and inferior rights, which are held by different persons, no co-sharer in either the superior or inferior proprietary rights shall be entitled to apply for perfect partition of his share without the special sanction of the Chief Commissioner.

2. A share in a mahal shall not be separately partitioned if the effect of such partition would be to create a mahal, the area of which would be less than 100 acres, unless the land-revenue, assessed or assessable, would be Rs. 100 or more.

3. Except with the sanction of the Commissioner, no application for perfect partition of a mahal shall be accepted after its revised assessment has been sanctioned by the Chief Commissioner.

4. An application for perfect partition shall be accompanied by a statement in the following form:—

Details of shares or pattis with names of sharers or pattidars.	Area held in severalty by each sharer or pattidar.				Area held in common.		
	Occupied.		Un-occupied.	Total.	Occupied	Un-occupied.	Total.
	Sir and khudkast	Held by malik-makbuzas and tenants.					

Details of the area held in common shall be given at foot.

5. On receipt of the application, the Settlement Officer shall have its details verified by reference to the settlement records, and if they are found to be correct or to contain no inaccuracies, on points affecting the claim to partition, he shall, on the applicant depositing the costs of service and such sum as the Settlement Officer may fix to cover the costs of partition, summon the other sharers in the mahal to attend before him, either in person or by recognized agent, on a date to be fixed by him.

6. Settlement Officers shall inform the sharers of the approximate proportions in which the total revenue of the mahal will be distributed if perfect partition be effected, and shall ascertain whether they are in favour of such partition or not, recording the substance of their statements.

7. If the Settlement Officer decides to make perfect partition, he shall submit the proceedings to the Commissioner for approval, together with a trace of the village map on which the limits of the new mahals as proposed shall be shown in colours.

8. On receipt of the Commissioner's approval, the Settlement Officer shall record a formal order declaring the partitioned shares to be separate mahals and giving details of their area and land revenue and shall arrange for the demarcation of the boundary line between the new mahals by permanent boundary marks.

Rules for Imperfect Partitions.

Notification No. 1739 of 30th May 1892, as amended by Notifications No. 5419 of 6th December 1894, No. 1746, dated 26th April 1899 and No. 2274, dated 11th May 1901.

1. Under section 136-A of the Central Provinces Land Revenue Act every person whose name appears in the record-of-rights as entitled to any proprietary right in a mahal in common with another or others, whether that right be superior or inferior, and every person whose right to be so recorded has been affirmed in a Civil Court, is entitled to claim imperfect partition.

2. An application for partition (to be made in Form A appended to these rules) must clearly specify the extent of the share to be partitioned and the extent of all other shares in the mahal, and shall be supported by a certified copy of the entries in the register of proprietary mutations relating to the mahal. It shall state whether under any private arrangement with his co-sharer or co-sharers the applicant is in possession of lands representing in part or in whole his share in the mahal, and if in whole, his reasons for applying for a partition.

3. An application for partition shall also specify the names and situation of all mahals or shares in mahals in the same district owned by the applicant and the same co-sharers as the mahal or share of which partition is sought.

4. If two or more co-sharers apply at the same time for imperfect partition of their shares, their applications shall be dealt with together. If during the progress of a partition a co-sharer who has not joined in the original application files an application for imperfect partition of his

share, such application shall, if possible, be dealt with together with the applications previously filed. But if such a course would entail delay in the completion of the original proceedings, no action shall be taken on the subsequent application until after the completion of these proceedings.

5. On receipt of the application, the Deputy Commissioner will consider whether it is open to objection on the face of it, and whether it is in order: and to this end the Revenue Record-keeper shall be called on to report—

(1) the present recorded proprietors of the mahal and how they derive their title from the person or persons with whom the last settlement was made;

(2) the constitution of the mahal as recorded in the settlement record-of-rights and any provisions regarding partition therein contained;

(3) other facts [if any] relevant to the application.

A date shall be fixed for the submission of the Record-keeper's report, which shall not be more than one week from the receipt of the application; and on the date so fixed the applicant or his recognized agent shall be examined, in order to ascertain that his intentions are such as can be carried out under the law.

6. If on consideration of the Record-keeper's report and the applicant's statements there appears to the Deputy Commissioner to be any valid objection to the application, the Deputy Commissioner shall either reject it, or, when the objection is susceptible of removal, return it for amendment.

7. If no objections to the proceedings be disclosed by this initial enquiry, a notification shall be published and notices shall be issued in the manner, and on the persons, specified in section 136-E of the Land-Revenue Act, on the applicants depositing costs of service. The notification and notice shall respectively be in Forms B and C appended.

During the term allowed by the notification referred to in the last preceding paragraph, the Tahsildar of the tahsil in which the mahal is situated shall be required to report as to the accuracy of the statements in the application, with especial reference to the details of sharers and their present holders.

The Tahsildar shall refer in this report to other relevant matters within his cognizance.

8. On the date fixed in the notification or any subsequent day to which the proceedings may be postponed, the Deputy Commissioner shall consider any evidence or statements in support of or against the application, and shall record his decision in the case of each objection. He shall also embody in his proceedings an abstract of the reports furnished under Rules 4 and 6 by the Tahsildar and Revenue Record-keeper.

9. If on a consideration of the objections the Deputy Commissioner is of opinion that there are good and sufficient reasons for rejecting the application, he shall reject it, recording his reasons for doing so. If the objection raises any question of title or proprietary right, the Deputy Commissioner shall proceed under Sections 136—G, 136-I.

10. Whenever it appears either from the application itself, or upon the objection of a co-sharer, or at any other stage of the proceedings that the whole property owned jointly by the applicant and his co-sharers in the mahal or share sought to be partitioned consists of two or more mahals or shares in the District in which the application is filed, the Deputy Commissioner shall make such summary enquiry into the value and circumstances of all such mahals or shares as he may deem necessary.

If on such enquiry it appears to the Deputy Commissioner that the partition of the whole property could be more suitably effected by the distribution among the co-sharers of whole mahals or shares, he may, unless the applicant can shew that the application to divide each such share or mahal singly, or any one of such shares or mahals independently of the others, is reasonable, proceed to make the partition in accordance with section 135-W.

11. If the Deputy Commissioner considers that the application should be granted, he shall record an order bringing the estate under

partition. Such order shall specify the extent of the shares of each applicant and of those who have not applied, and shall state the estimated cost of partition and its apportionment to the proprietors of each share. One-third of the costs so estimated shall be deposited within 15 days of the date of the order bringing the estate under partition, and the remaining two-thirds shall be payable at the time and in the instalments which the Deputy Commissioner may from time to time direct.

12. If the costs are not deposited within the period specified in the last preceding paragraph, the Deputy Commissioner may strike off the case and recover, under section 94 of the Central Provinces Land-revenue Act, from the applicant for partition the expenses (if any) already incurred. If the costs are deposited, the Deputy Commissioner shall, if the mahal has not been recently surveyed, cause it to be surveyed and a rent-roll prepared, exhibiting, so far as may be possible, the total rents payable in the mahal, the rates of rent, the classes of tenants, qualities of soil, nature and estimated quantity of produce, and all other relevant information.

In appointing an Amin, the Deputy Commissioner shall fix a date for the submission of the Amin's report.

When the survey made at the previous settlement and the khasra and jamabandi of the mahal have been kept up to date by the Patwari it will not ordinarily be necessary to re-survey.

13. In making the survey or other local enquiry the Deputy Commissioner shall ordinarily employ the Patwari of the village concerned. But for sufficient reason to be recorded, he may employ a special Amin who shall be paid a salary not ordinarily exceeding Rs. 30 per month.

14. All persons connected with the mahal shall be bound to furnish the Patwari or Amin with such information relevant to the partition as he may by written notice require.

15. When in making a partition it has been necessary to divide a tenant's holding into two or more holdings by distributing the land included in it between two or more pattis, the Deputy Commissioner

shall fix the rent of each such holding by apportionment of the rent paid on the original holding. A statement giving details of the rents fixed under this rule shall be drawn up in the following form and be filed with the record:—

Name of tenant with usual additions and class of tenure.	Details of original holding as it stood before partition.						Details for each holding created by partition.		
	Khasra number.	Area, classed by soils.			Total area.	Rent.	Patti I.	Patti II.	Etc.
							Columns as 2-7.	Columns as 2-7.	Columns as 2-7.
1	2	3	4	5	6	7			

Each tenant shall be given a copy of the entries affecting him.

16. When the Deputy Commissioner is satisfied that he has before him all the information requisite for executing the partition, he shall record an order to that effect and fix a day and place for settling the general arrangements of partition. If possible the place should be the village in which the lands are situated.

If the applicant does not attend in person or by recognised agent on the date fixed in the summons, the case may be postponed subject to such order as to costs as the Deputy Commissioner may pass; or it may be struck off. If any co-sharer who has been duly summoned does not attend, the case may be postponed, subject to any order as to costs which the Deputy Commissioner may consider fit to pass, or it may be proceeded with in the co-sharer's absence.

17. On the date fixed in the summons, the Deputy Commissioner shall consider all the information referred to in paragraph 14 above, and may also examine the applicant and the co-sharers and patwari, or such of them as are present as to the constitution of the mahal and the manner in which they wish the partition to be effected.

The Deputy Commissioner may allow the proprietors to make a private partition among themselves on the basis of the information collected. If the co-sharers present desire that the partition be effected by arbitration, the Deputy Commissioner may refer the proceedings to arbitrators, fixing their number and the mode of their nomination, and recording any instructions for their guidance he may think necessary. The number of arbitrators shall ordinarily be three, one being nominated by the applicant or applicants for partition, a second by the other co-sharers, and a third as umpire by the Deputy Commissioner, and their proceedings shall be generally governed by the provisions of sections 506—522, both inclusive, of the Civil Procedure Code.

18. If a private partition is not made or if the arbitration paper is not presented to the Deputy Commissioner within the time fixed by him, he may withdraw the case from private partition and arbitration and make the partition himself.

19. In making the partition the Deputy Commissioner will have regard to the information referred to in paragraphs 10, 11 and 13 above, and to the statements of the parties and their witnesses and the patwaris and other persons having knowledge, to the provisions of sections 136-L to 136-P inclusive of the Land-Revenue Act, and to the following considerations:—

[*a*] vicinity of roads, railways, rivers, &c.,
[*b*] the facilities for irrigation,
[*c*] the state of embankments and water-courses,
[*d*] any other circumstances affecting the value of the land.

20. The "partition proceeding" required by section 136-K shall include a statement in the following form. The terms and nature of the proceeding shall be carefully explained to the co-sharers and any objections shall be noted:—

Class of holding.	PREVIOUS TO PARTITION.															TO BE ALLOTTED TO EACH SHARE UNDER PARTITION.							Remarks.
	HELD JOINTLY.					HELD IN SEVERALTY.					TOTAL FOR MAHAL.					PATTI I.						Patti, II, III, &c. (columns 17 to 22 to be repeated for each Patti)	
	Area.				Assets.	Area.				Assets.	Area.				Assets.	Area.				Assets.	Detail of khasra numbers or parts of numbers allotted.		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22		
Occupied.																							
Sir ...																							
Khudkasht ...																							
Held by tenants:—																							
„ absolute-occupancy.																							
„ occupancy ...																							
„ ordinary ...																							
„ service ...																							
„ muafi malguzari ...																							
Held by malik-makbuzas including Government maufidars.																							
Dwelling-house sites ...																							
Gardens ..																							
Orchards ..																							
Total occupied..																							

Unoccupied.																					
Groves ...																					
Tree forest ...																					
Scrub jungle and grass																					
Covered with water, hill and rocks ...																					
Roads ...																					
Total unoccupied ...																					
GRAND TOTAL																					

Explanations.

(i) Columns 2–5, 7–10 and 12–15 are for soil classes. They need only be filled up in the case of occupied lands. Their number will depend on the number of soil classes adopted. Only the principal heads used in soil classing need be adopted. Minute classification is unnecessary.

(ii). The asset shown in columns 6, 11, 16 and 21 will include (1) a fair rental valuation [at rates paid by occupancy or ordinary tenants] in the case of *sir* and *khud-kast*, (2) the rental paid by tenants and the revenue [*plus* hak-ul-tahsil, if any] paid by malik-makbuzas, and (3) siwai income in the case of unoccupied land.

(iii) Any fields allotted to the share under partition which are now held in severalty by the sharer claiming partition or by other co-sharers should be noted in the Remark column.

(iv) Details of property held in common [village site, tanks, wells, temples, burning or burial grounds, &c.] are to be given in a Schedule attached to this Statement, on which the wishes of the co-sharers in regard to them should be carefully noted, and the proposed arrangements for their disposal described.

21. When the objections referred to in paragraph 18 of the above have been considered and any necessary modifications effected in the partition proceeding, such proceeding shall be made over to the Patwari or to the Amin, as the case may be, with instructions—

(1) to check the accuracy of the map and records on which it is based, nothing any corrections which are needed;

(2) to explain its details to the co-sharers; and

(3) to make a tracing of the village map corrected up to date.

Notifications [in Forms D and E] should be issued, warning all persons interested in the partition to attend the Patwari (or Amin)

At the same time a day should be fixed for the further hearing of the case, the co-sharers being summoned to attend either in person or by recognized agent, and the Patwari or Amin, as the case may be, being ordered to produce the map and papers. The date so fixed should be generaly notified by the issue of a notification in Form F.

22. On the day appointed or any other date to which the hearing may have been postponed, the Deputy Commissioner shall re-consider the proceedings, and after calling for any further information that may be necessary and disposing of any objections may approve the partition with any amendments he may think proper.

23. When two or more separate shares shall consists of equal shares of the parent mahal, the Deputy Commissioner may direct the parties to draw lots in his presence for their shares, unless they come to a mutual agreement as to the allotment.

The agreement of any co-sharers to the final scheme of partition shall be recorded and signed by them. Any objections shall be recorded by the Deputy Commissioner together with his reasons for over-ruling them.

24. The Deputy Commissioner's final order for partition shall include a revised copy of the statemnct mentioned in paragraph 18 of

these rules, such revised statement to be called "the Partition Statement." It shall also contain a revised schedule of the costs or partition and of the method of their apportionment. These costs, if in arrear, shall be recoverable from the co-sharers concerned under the procedure specified in section 94 of the Land-revenue Act.

25. The partitioned share or shares shall then be clearly marked on the map, traced in colours, and the case submitted to the Commissioner for sanction.

A date shall be fixed for the appearance of any objecting co-sharers in the Commissioner's office, and a notice in Form G issued from that office.

26. When the partition has been sanctioned by the Commissioner, the Deputy Commissioner shall cause a revised jamabandi of the village to be prepared, in which the lands which have been partitioned shall be entered as a separate patti. The jamabandi and map shall be signed by him, and shall be deposited in the district record-room A Copy of the revised jamabandi shall be given to the patwari of the mahal, and copies may be supplied to co-sharers on payment of the usual fees.

He shall also draw up a final order declaring that the partition has been sanctioned by the Commissioner, and that it shall come into force from the first day of the next agricultural year, and shall publish such order by notification, under section 136-S of the Land-revenue Act, at his office, and at some conspicuous place in the village or villages of the mahal of which the partitioned patties form part.

Possession of the shares allotted to them shall be given to the parties from the first day of the agricultural year next after the confirmation of the partition by the Commissioner, and the Deputy Commissioner may require the assistance of the Magistrate in giving such possession.

Note:—The final order prepared under paragraph 2 of this rule must be stamped under Schedule I, Art. 37 of the Indian Stamp Act, I of 1879, and Government of India Notification No. 5199-S. R., dated the 1st November 1895 Schedule I, No. 5, Department of Finance and commerce, with a duty not to exceed the amount payable on a valuation of the land at five times the Annual Revenue.

27. A private partition made by the sharers under Rule 15 above or the award of arbitrators appointed under these rules shall, if approved by the Deputy Commissioner, be formulated by him in a Partition Statement, such as is prescribed by Rule 22. Rules 23 and 24 shall apply to proceedings based on such private partition or arbitration.

28. A patwari who has performed his duties in a partition case satisfactorily and without any detriment to his duties under tee Patwari Rules may be granted a reward which shall not ordinarily exceed Rs. 5 per 100 acres, but may in special cases of exceptional intricacy and difficulty extend to Rs. 10 per 100 acres.

29. The costs of partition shall ordinarily be borne by all the co-sharers of the mahal, in the proportion which these shares bear to the entire mahal. But for special reasons, to be recorded by him, the Deputy Commissioner may direct that the costs shall be borne by the applicants for partition either alone or in conjunction with one or more of the non-applicant co-sharers.

If any proprietor has vexatiously or by want of due diligence imposed obstacles in the way of the completion of the partition, an amount in excess of his proportionate share of the cost may be recovered from him, and such excess amount shall go in reduction of the amount to be levied from the other sharers.

30. When a co-sharer who has not joined in the original application for partition applies under Rule 3 for partition of his share, or whenever a local enquiry is held in consequence of an objection raised by any person, whether a sharer in the mahal or not, the Deputy Commissioner may declare the cost incurred by such subsequent application for partition or by such enquiry, and order that such costs be recovered in whole or part from the person making the application raising the objection.

31. The costs of partition shall include—

(a) the costs of any establishment entertained for partition purposes;

(b) all contingent expenses incurred on account of partition;

(c) process fees;

(d) a fair share of the cost of any establishment maintained in the Deputy Commissioner's or Commissioner's office for partition work.

The estimate of cost mentioned in Rule 9 above shall ordinarily be calculated on the total area of the mahal affected by the partition, at a rate which shall not ordinarily exceed Rs. 9 per 100 acres. If this amount should fall short of the actual expenses incurred in making the partition as ascertained under Rule 22 above, the difference between the estimated and actual expenses shall be costs in the case and recoverable in accordance with the procedure laid down in section 94 of the Land-revenue Act.

32. In these rules Deputy Commissioner includes an Assistant Commissioner, Extra-Assistant Commissioner and a Tahsildar, if empowered by the Chief Commissioner to effect a partition or to conduct any of the proceedings connected therewith.

33. The progress of each case is to be recorded in a register (Form H), and an account maintained of receipts and expenditure (Form I). Quarterly returns of Partition work will be submitted by Deputy Commissioner in Form J.

FORM A.

Application for partition.

THE

Deputy Commissioner of

(1) Name and residence of applicant,

(2) Name of the estate,

(3) Number under which the estate is borne on the revenue roll and the revenue demand for which it is liable,

(4) Name and address of every proprietor, whether recorded or un-recorded,

(5) Character and extent of the interest of which each proprietor is in possession,

(6) Specification of the lands [if any] which applicant is in possession of under any private arrangement with his co-sharers, and the portion of his share which these lands represent. If the lands of which he has separate possession represent his whole share, statement of his reasons for applying for partition,

(7) Specification of any lands held by all or any of the proprietors of the parent estate in common with all or any of the proprietors of other estates, and of the rights of such proprietors respectively in such lands,

(8) Remarks.

I do declare that this application is correct to the best of my acknowledgment and belief.

FORM B.

Notification under Section 136-E of the Central Provinces Land-revenue Act.

DISTRICT————

Be it known to all sharers in mahal———— mauza———— that———— has made application for the imperfect partition of the share owned by him in the said mahal. Any sharers having anything to urge in favour of or against such partition should appear either in person or by recognized agent at the office of——————on the——————day of————190

[Sd.]

Deputy Commissioner.

Dated the——————

FORM C.

Notification under Section 136-E of the Central Provinces Land revenue Act.

DISTRICT——————

To——————share in mahal——————mauza——————.

You are hereby informed that——————, sharer in the above mahal, has made application for the imperfect partition of his share. If you have any objection to make to such partition, you are required to appear in person or by recognized agent at the office of——————on the——————day of————190

[Sd.]

Deputy Commissioner.

Dated the——————

FORM D.

Notice to Proprietors, Managers &c., to attend.

Notification to——————

Proprietors of mahal——————

Tahsil——————, Zilla——————

To-day the records connected with the partition of this mahal have been submitted for the purposes of appointing an [Amin or Patwari] for the measurement, and an (Amin or Patwari) has this day been appointed for that purpose; therefore under

you are informed that you are required to attend in person or by an Agent upon the (Amin or Patwari) for the purpose of pointing out boundaries, and of affording such assistance and information as may be required for the purposes of the Partition Act. Herein fail not.

Deputy Commissioner.

Dated the——————

FORM E.

Notice to Proprietors and others to attend.

Name and number of mahal——————

Tahsil——————District——————

The records of the partition of mahal—————— tahsil——————, district—————— having been submitted to the Deputy Commissioner, and the under-signed having been appointed by the Deputy Commissioner to make the measurement and prepare the jamabandi, you are informed that you are required to attend the under-signed for the purpose of making the measurement and preparing the jamabandi. In case of your failure to attend, proper orders will be passed by the Deputy Commissioner Herein fail not.

Patwari or Amin, &c.

Dated the——————

FORM F.

Notification to Proprietors of date for deciding mode of partition.

Whereas the papers connected with the measurement and revised rent-roll for the partition of mahal——————

No.————, tahsil————, district————, have been completed, and the papers are sufficiently correct to be accepted or adopted for the purposes of the partition, notice is hereby given——————————

that————has been fixed for the determination of the general arrangement of the partition, and all proprietors of the mahal are called on to be present in this office on that day. The proprietors are not to fail in this.

Deputy Commissioner.

Dated the————————

FORM G.

Notice to the Recorded Proprietors.

To————of mahal————————

Pargana————————, District————————

As the partition of mahal————————

No.————, Tahsil————, District———— has been approved by the Deputy Commissioner of that district, you are hereby informed that the papers have been submitted to me for confirmation, and that I shall consider the case on————

Any appeals or objections must be presented in this office within 15 days from the service of this notice.

Commissioner.

Dated the————————

FORM H.

Register of proceedings for the Partition of Estates under Chapter X-A, Central Provinces Land-revenue Act.

[To be maintained in the Deputy Commissioner's Office.]

N. B.—If the partition is rejected under Section 136-F, or if it is quashed by the Commissioner under Section 136-R, or if it has been arranged by private agreement or by arbitration under Section 136-J, the fact should be noted in column 8.

1	2	3	4	5	6	7	8	9	10	11							12	13	14	15	16	17	18
Number.	Name of mahal and its Number on the roll.	Former Revenue of the estate.	Name of the applicant for partition.	Name of the co-partners and extent of their respective shares.	Area in acres of property to be divided.	Date of presentation of application to Deputy Commissioner.	Date of Deputy Commissioner's order for partition.	Court to which the further proceedings in the case have been transferred.	Number and description of shares into which the partition is to be made.	Particulars of estimated cost of partition; dates fixed by Deputy Commissioner for payment of instalments, and dates on which instalments have been paid.							Date of preparing partition proceeding.	Date of approval of partition statement by Deputy Commissioner, section 136-R.	Date of submission of partition papers to Commissioner.	Purport and date of Commissioner's order in appeal if preferred.	Date of confirmation of partition by Commissioner.	Date of possession being given to the several proprietors of the separate estates allotted to each.	Remarks.
										Estimated cost. (*a*)	Date fixed for payment of			When paid.									
											1st instalment. (*b*)	2nd instalment. (*c*)	3rd instalment. (*d*)	1st instalment.	2nd instalment.	3rd instalment.							

FORM I.

Register of Receipts and Expenditure on account of Mahals under partition.

[To be maintained in the Deputy Commissioner's office.]

1	2	3	4	5						6		7	8			9	10
				DEMAND.						REALIZATION.			EXPENDITURE.				
Number of case.	Name of mahal.	Number of mahal.	Name of proprietor.	Remuneration to Patwari or Amin.	Contribution [if any] to Establishment in Deputy Commissioner's Office.		Contingent expenses.	Process fees.	Total.	Date.	Amount.	Balance.	Date.	On what account.	Amount.	Amount of balance remaining to the credit of the estate after meeting all expenses connected therewith.	Remarks.

FORM J.

Quarterly Statement showing the progress made in the disposal of Partition Cases in the District of————— during the quarter ending.

[To be submitted to the Commissioner.]

	Quarter ending.	
(1) Number of cases at the beginning of the quarter.		
(2) Institutions during the quarter.		
(3) Number of cases rejected by Deputy Commissioner under Section 135-F.		
(4) Number of cases sent to Patwari or Amin for measurement or enquiry.		
(5) Number of cases submitted for approval of the partition.		
(6) Number of cases postponed or returned to Amin or Patwari for further enquiry.		
(7) Number of cases disposed of by the Deputy Commissioner, *i. e.*, submitted to the Commissioner for confirmation		
(8) Number of cases confirmed by the Commissioner.		
(9) Number of cases quashed by the Commissioner under section 136-R.		
(10) Number of cases pending at the close of the quarter—		
(*a*) Not over 6 month		
(*b*) Over 6 months		

Note.—(1) By pending cases are meant cases which are pending with the Deputy Commissioner or with one of his Assistants. and which have not been submitted to the Commissioner of the Division for sanction or which, having been submitted, have been returned by the Commissioner for completion or further enquiry.

(2) For all cases pending over six months a statement should be added on the back of the form giving the name of the case and the date of institution. An explanation of the delay need only be submitted when specially called for by Commissioner.

Partition may be effected by distribution of mahals.

136-W.—Notwithstanding anything contained in this Chapter, when an estate, in respect of the whole or part of which imperfect partition is sought, consists of two or more mahals, or shares in two or more mahals, the partition may be effected by the distribution of such mahals or shares between the co-sharers without imperfect partition, of the mahals or shares, or partly by such distribution and partly by imperfect partition as the Deputy Commissioner may, of his own motion, or on the application of the parties, deem fit. In making the partition referred to in this section, the Deputy Commissioner shall be guided by the provisions of this Chapter so far as they are compatible with the distribution as aforesaid.

Note:—The present Section was inserted by Section 9 of the Central Provinces Land-revenue Act, 1898 [XII of 1898]; the former Section which was inserted as part of Chapter X-A by the Central Provinces Land-revenue Act, 1889 [XIV of 1889] was repealed by the Repealing and Amending Act, 1891 [XII of 1891]

CHAPTER—XI.

VILLAGE-OFFICERS AND PATWARIS.

Power to make rules as to officers.

137. The Chief Commissioner may make rules regulating the appointment, remuneration, suspension and removal of lambardars, sub-lambardars, [mukaddams and patels]:

Provided that, except with the previous sanction of the Governor-General in Council, proprietors, other than malik-makbuzas, shall not be liable to pay, on account of the aggregate remuneration of lambardars or sub-lambardars and mukaddams, a sum exceeding five per cent, on the land revenue which is assessed on their land, or which, when their land is free from revenue, would, in the judgment of the Deputy Commissioner, be assessed on their land if it were subject to assessment.

In framing rules for the appointment, under this section, of lambardars and sub-lambardars for any mahal, the Chief Commissioner shall have regard among other matters to local custom and hereditary claims, and to entries on the subject in the record-of-rights of such mahal.

The lambardar of the village shall ordinarily also be the mukaddam. When a lambardar who does not reside in the village is appointed mukaddam thereof, he shall, subject to the approval of the Deputy Commissioner, appoint an agent to perform the duties of a mukaddam. If there are resident co-sharers in the village, the non-resident lambardar shall appoint one of them to be his agent unless the Deputy Commissioner for special reasons allows him to appoint some other person. If a mukaddam fails within a reasonable time to appoint an agent, with the approval of the Deputy Commissioner, the Deputy Commissioner shall himself appoint an agent and shall fix the amount of his remuneration, which shall be paid to him by the mukaddam.

An agent appointed under this Section shall be deemed to have the powers conferred on, and to be responsible for performance of the duties prescribed with regard to, mukaddams by this Act and the rules made hereunder.

Any fine imposed on such agent for a breach of the provisons of this Act or the rules made hereunder may be recovered from the mukaddam whose agent he is by the Deputy Commissioner.

In a ryotwari village the patel shall ordinarily be the mukaddam.

Notification No. 4861 of 7th November 1894 as amended by Notification No. 1812, dated 31st March 1890, and Notification No. 1373, dated the 28th February 1902.

I.—Every lambardar shall be appointed by the Deputy Commissioner of the District, provided that—

[1] if the record-of-rights of a mahal prescribes the manner in which the lambardar is to be selected, the selection shall be made after that manner;

[2] if the record-of rights contains no provisions applicable to the case, the Deputy Commissioner in selecting a person for the office shall have regard to—

(a) local custom, if any be ascertainable;

(b) hereditary claims, and to the interest possessed in the mahal by candidates;

(c) the wishes of the co-sharers whom the lambardar is to represent.

Explanation:—I. A sadar malguzar and the managing gaontia of a village in the Sambalpur District are lambardars If there is only one malguzar or gaontia to a mahal, he is to be considered lambardar.

Explanation:—2. In these rules the term lambardar includes sub-lambardar.

II.—There shall be at least one lambardar for each mahal. The Deputy Commissioner may appoint lambardars to any new mahal which may be formed, and, when needful, may add to or reduce the number of lambardars existing in a mahal at the time of the issue of these rules: provided that reductions shall be made only when a lambardar dies or his office becomes otherwise vacant.

III.—Proceedings for the appointment of a lamberdar shall in all cases commence by a proclamation calling on persons claiming the appointment, or claiming to nominate for the appointment, to appear before the Deputy Commissioner, or such officer as he shall appoint, on a date which shall not be less than 30 days from the date on which the proclamation may be posted up in the village.

IV.—When a lambardar is a minor or a female, or unfit through any infirmity of body or mind to perform the duties of the office in person, the Deputy Commissioner shall appoint a gomashta, who, if possible, shall be a member of the proprietary body: provided that no gomashta shall be appointed for a female lambardar who, in the Deputy Commissioner's opinion, is able to perform the duties of the office.

V.—A Deputy Commissioner may remove a lambardar from office—

(*a*) on the application of a member of the proprietary body:

(*b*) for bad character or gross misconduct.

VI.—In districts other than Sambalpur and in the proprietary villages of that district, the lambardar shall be entitled to receive an allowance fixed at five per cent on the land-revenue which is assessed on the mahal or part of the mahal for which he has been appointed, or which, if the mahal or part of the mahal is free from revenue, would in the judgment of the Deputy Commissioner, be assessed on the mahal or part of the mahal if it were subject to assessment.

VII.—In the Gaontiahi villages of the Sambalpur District the lambardar gaontia is entitled to receive remuneration as lambardar from the sharers, and all holders of bhogra at the rate of 3½ annas per rupee on the revenue value of the whole of the bhogra, exclusive of that portion of it which is held by him in severalty as a sharer: provided that—

(1) the amount of any assessment made payable to Government on the bhogra shall be deducted from the revenue value of the whole of the bhogra before the remuneration is calculated;

(2) if the lambardar holds, as such, any bhogra land which he would not be entitled to hold merely as a sharer, the revenue value of such land shall be deducted from the amount payable to him under this clause as remuneration.

VIII.—All persons holding the office of lambardar, when these rules come into force, shall be deemed to have been appointed hereunder.

Appointment of Patels in Rayotwari villages.

Notification No. 5036 of 15th November 1894.

I.—In villages where there is no watandari patel, a managing (mukaddam) patel will be appointed by the Deputy Commissioner and will be liable to dismissal by him.

His tenure will be non-hereditary, and he will be remunerated by a commission on the revenue collected by him at a rate to be fixed by the Deputy Commissioner:

Provided that a managing patel can, by substantially improving his village, earn the grant of a watandari status.

II. Ryots will be bound to pay their revenue through the patel of their village.

The appointment of Mukaddams.

Notification No. 1812, dated 31st March 1890.

I.—Every mukaddam shall be appointed by or under the orders of the Deputy Commissioner.

II.—A mukaddam shall be appointed for every village, whether it be inhabited or not: Provided that in exceptional cases a single mukaddam may, with the sanction of the Chief Commissioner, be appointed for a group of villages.

III. When the lambardar of a village is a minor or a female or unfit through age or infirmity of body or mind to perform the duties of mukaddam in person, the lambardar-gomashta appointed under Rule IV of the Lambardar Rules contained in Notification No. 4861, dated the 7th November 1894, shall be appointed mukaddam, unless the Deputy Commissioner disallows the appointed under the provisions of Rule VI below: Provided that if the lambardar is a female and the Deputy Commissioner considers that she can perform the duties of mukaddam, she may be appointed mukaddam. subject to the approval of the Commissioner.

IV.—If the Deputy Commissioner considers that a lambardar otherwise qualified for the post of mukaddam is, owing to bad character unfit for the post, he may pass him over and appoint another person.

V.—The Commissioner's sanction is necessary to the appointment under these rules to the office of mukaddam of any person other than, the lambardar or lambardar-gomashta.

VI.—No person shall be approved by the Deputy Commissioner for the post of mukaddam-gomashta who (1) is a minor or a female, (2) or is in the Deputy Cemmissioner's opinion of bad charector, (3) or is in the Deputy Commissioner's opinion unfitted by infirmity of body or mind to discharge the duties of the post, (4) or is not permanently resident in the village if it is an inhabited village, (5) or fails to come up to any Educational standard prescribed by the Chief Commissioner for mukaddam-gomashtas.

VII. When in a village there are more lambardars than one qualified for appointment to the office of mukaddam, the Deputy Commissioner shall select the one to be so appointed: Provided that a resident lambardar shall be appointed in preference to a non-resident lambardar: Also provided that with the Commissioner's sanction more than one mukaddam may be appointed to a village.

The dismissal of Mukaddams.

VIII.—The Deputy Commissioner may dismiss a mukaddam for disobedience of orders, neglect of duty, incompetence or bad charector: Provided that no mukaddam shall be dismissed until he has had an opportunity of showing cause in writing against such dismissal.

IX.—When from any cause a person other than the lambardar has been appointed mukaddam and such cause has ceased to exist, the Deputy Commissioner may dismiss the mukaddam and appoint the lambardar in his place.

X.—Every dismissal of a mukaddam shall be reported to the Commissioner for confirmation.

X-A.—Any mukaddam who is declared, on his own application to be incapable of managing his property under the provisions of Section 7, sub-Section (1), clause (*c*) (iv), of the Central Provinces Government Wards Act, XVII of 1899, shall be deemed to have resigned his office as mukaddam, and shall, unless the Deputy Commissioner otherwise direct, forth-with vacate the office.

The remuneration of Mukaddams.

XI.—When the lambardar is mukaddam, he shall not be entitled to any extra remuneration on that account.

XII.—When the mukaddam is other than the lambardar, the Deputy Commissioner shall fix the amount which the lambardar shall pay the mukaddam as remuneration. In fixing this amount the Deputy Commissioner shall have regard to the amount of work which the mukaddam has to perform: Provided that no lambardar shall be compelled to pay the mukaddam as remuneration a sum exceeding five per cent. on the revenue which is assessed upon the village or which, if the village is free from revenue, would, in the judgment of the Deputy Commissioner, be assessed on the village if it were subject to assessment.

In villages where there is a sub-lambardar as well as a lambardar, the Deputy Commissioner shall decide according to the circumstances of the case by whom the mukaddam is to be paid. (C. P. R. Manual I. P. 155 to 159).

Note:—A Malguzar who purchases a malik-makbuza holding is not a malik-makbuza of that holding after the purchase. [*Govindrao, Sadasorao*, vs. *Bapu &c.* 6. C. P. L. R. P. 107.]

Duties of lambardars.

128. It shall be the duty of every lambardar and sub-lambardar—

(*a*) to collect and pay into the Government treasury so much of the land-revenue as may under section 71 be payable through him, either solely or jointly with other lambardars or sub-lambardars;

(*b*) to collect and pay to the mukaddam, or into the Government treasury, as the Deputy Commissioner may direct, all sums of money payable through him, either solely or jointly with other lambardars or sub-lambardars, by the propritors whom he represents, on account of the remuneration of the mukaddam, patwaris, or village-watchmen, or on account of any expenses which the mukaddam is authorized to recover from the lambardars or sub-lambardars of his village;

(*c*) to assist the mukaddam in obtaining all particulars which he is bound to enter in the annual village-papers, or to report under this Act.

Note:—(1) In an undivided village the Lambardar is the agent of the co-shares for the management of the estate according to to ardinary custom and his authority would not extend to the transfer of a perpetual interest in the land owned by the co-sharers. He could only provide for the cultivation of land by letting it to tenants in the customary manner but his authority does not extend to the granting of a perpetual lease or even a lease for a long period. *Held* further, that where an agent exceeds his authority, then if the part of what he does which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal. Where the excess can not be separated, then the principal is not bound by the transaction at all. (*Daryaosingh vs. Mukandsing*, II. C. P. L. R. page 103).

[2] The possession of a Lambardar who had to collect the profits, can not be said to be adverse to the recorded co-sharers merely because he paid them no share of the profits, nor can it be said that they were out of possession, because they received no profits. [*Sheoba vs Simarin*, II. C. P. L. R. page 171].

[3] Under the general principles of the Hindu Law one co-sharer can dispose of his own share of ancestral undivided property for value.

The post of Lamberdar or Managing Gaontia and the remuneration of that post are not alienable. (*Bina pujari Brahmin vs Biraj Mohan Babaa* C. P. L. R. III. page. 126).

[4] A suit by a Lambardar for recovery of additional rates is a suit of the kind mentioned in Article 37, schedule II of Act 1877 and not cognizable by the Courts of Small Causes. As second appeal lies in such a suit, revision under Section 622 of the C. P. Code can not be allowed. [*Rani Umed kowar vs. Jawahir Lal* III. C. P. L. R. P. 177].

[5] A, the Lambardar of a village sued a Malik-makbuza for arrears of revenue. The latter pleaded that he had already paid it to a co-sharer by virtue of a private partition of the village among the co-sharers under which each of them collected rents from certain particular tenants. The first court holding the partition proved, dismissed the plaintiff's suit. The lower appellate Court revised the first Court's decision on the ground that as the Lamberdar is responsible for the Government revenue, he ought to be permitted to collect the rents.

Held that a *Malik-makbuza* does not pay rent to the proprietors.

His land "is separately assessed with *revenue* in a *mahal*" *vide* Section 4, Sub-section 10 of the Land-Revenue Act, and it is quite clear, reading Sections 71, 138, and 140 togather, that save in the exceptional case of his being ordered under the provisions of the last of those Sections to pay the revenue assessed on his holding direct into the Government treasury, he must pay it through a *Lambardar* or a *Sub-lamberdar* and not to a co-sharer, any private arrangement among the co-sharers notwithstanding. (*Baboosingh* vs. *Dasin* C. P. L. R. VII. P. 133)

[6] Neither the Land-Revenue Act nor the Tenancy Act confers upon the *Lamberdar* the right to collect rents from tenants as a matter of course and in spite of any private agreement that the Malguzars may have made among themselves, by virtue of which they have partitioned the village among them and undertaken each to collect the rents from those tenants whose holding fall within his share Where a Lamberdar collects rent from tenants, he does so by the authority delegated to him by the Malguzars and they have full powers to withdraw that authority by private agreement on partitioning the village among themelves.

There is no distinction between a private partition and an imperfect partition officially made under the Land-Revenue Act. (*Babusingh* vs. *Jaitlal* &c. C. P. L. R. VII P. 137)

[7] No single co-sharer can arrogate to himself the right to collect the rents of the village where there has been no partition. (*Partapsingh* vs. *Umraosingh* C. P. L. R. XI. P. 1)

[8] The remuneration recoverable by a Lambardar under Section 139 of the Land Revenue Act is only for the performance of his statutory duties as defined in Section 133. Apart from such remuneration be can recover by ordinary means from the co-sharers their quota of sums which he spends properly and necessarily for the general management of the village on behalf of the proprietary body (*Tatya Patel vs Dhundi Raj Patel* XI. C. P. L. R. P. 27).

[9] A Lambardar who has paid to the Government the whole of the land Revenue assessed upon a mahal can not recover from the

assignee of a defaulting co-sharer. [*Balaji Suna* vs. *Govinda* XI C. P. L. R. P. 111].

[10] In the absence of any agreement between the parties a suit by a Lamberdar against a co-sharer to recover compensation for the use and occupation of *sir* and *Khudkast* land is not maintainable. (*Lachman Ram* vs, *Munnalal & Raghunath* C. P. L. R. XIII. P. 48.)

[11] Ordinarily the Lamberdar as the agent of the co-sharers for the management of the village would be the person whose consent is necessary and sufficient. In the same way the Lamberdar acting on behalf of the proprietory body would be entitled to sue to set aside a voidable transaction. It is however competent to the co-sharers of a village to make what arrangements they choose for its management. They are under no obligation to constitute the Lamberdar as their agent and he cannot claim to represent them as such. (*Gopal Ramkrishna* and *others* vs. *Govind Pandurang Rangari* C. P. L. R. XIII. P. 113 to 114).

[12] Before any Gaontia can recover *Bhet-bigari* dues from the Lamberdar he must plead and prove that services were connected by the ryots for money payments and that such payments have been realized by the Lamberdar. (*Kunjban gaontia* vs. *Shamsundar* and *others* C. P. L. R. XIV. P. 73.)

Lambardars may recover fees and other charges from proprietors.

139. Together with the land-revenue, lambardars and sub-lambardars may recover from the proprietors whom they respectively represent—

(*a*) any remuneration to which they are entitled as such; and

(*b*) the sum which, under section 138, they are bound to pay to mukaddams:

Provided that no such recovery shall be made from malik-makbuzas paying a percentage which includes remuneration to mukaddams and lambardars.

Notes:—(1) The term "proprietor" in Section 139 of the C. P. Land-Revenue Act includes a person who has lawfully entered into possession of proprietary rights and interests. (*Thakur Maharaj Singh* vs. *Jagannath* C. P. L. R. XI. P. 15)

(2) The remuneration recoverable by a Lamberdar under Section 139 of the Land-Revenue Act is only for the performance of his statutory duties as defined in Section 138. Apart from such remuneration he can recover by ordinary means from the co-sharers their quota of sums which he spends properly and necessarily for the general management of the village on behalf of the proprietary body. (*Tatia Patel &c.* vs. *Dhundiraj* C. P. L. R. XI. P. 27)

(3) A Lamberdar who exacts *Bhet-bigari* from all the ryots in the village is bound to account to the co-sharers for the value of the labours of which he has deprived them. (*Chamra Panigrahi* vs. *Lakhan Panigrahi* C. P. L. R. XV. P. 14)

Deputy Commissioner may alter channel through which malik-makbuza pays revenue.

140. On the application of any malik-makbuza or other like holder of land, or of the lambardar or sub-lambardar through whom such malik-makbuza or other holder of land pays the revenue assessed on his holding, the Deputy Commissioner may, for sufficient cause shown, order that such revenue be paid through any other lambardar or sub-lambardar, or that it be paid into the Government treasury.

Effect of order for payment of revenue direct to Government.

When the Deputy Commissioner orders such payment to be made into the Government treasury, such portion of the percentage fixed under section 64 as the Deputy Commissioner, subject to the control of the Chief Commissioner, may determine, shall be so paid, and the malik-makbuza or other person shall pay the rest to the mukaddams on account of their fees and the other village-expenses.

Note:—A, the Lambardar of the village sued a *Malik-makbuza* for arrears of revenue. The latter pleaded that he had already paid it to a co-sharer by virtue of a private partition of the village among the co-sharers under which each of them collected rents from certain particular tenants. The first Court holding the partition proved, dismissed the Plaintiff's suit. The Lower Appellate Couot reversed the first Court's decision on the ground that as the Lambardar is responsible for the Government revenue, he ought to be permitted to collect the rents. *Held* that a *Malik-makbuza* does not pay rent to the proprietors. His land is "separately assessed with *revenue* in a *Mahal*" *vide* Section 4, Sub-section 10 of the Land-Revenue Act, and it is quite clear, reading Sections 71, 138, and 140 together that save in the exceptional case of his being ordered under the provisions of the last of those Sections to pay the revenue assessed on his holding direct into the Government treasury, he must pay it through a Lambardar or a sub-lambardar and not to a co-sharer, any private management among the co-sharers notwithstanding. (*Babusing* vs. *Daxin* C. P. L. R. VII. P. 183)

Duties of mukaddams.

141. It shall be the duty of every mukaddam—

(*a*) to control and superintend the village-patwari and village-watchmen; to report their deaths or absence from duty; to maintain them in the possession of any lands appertaining to their office; to recover and pay to them any cash allowances to which they may be entitled; and to take such steps as may be necessary to compel them to perform their duties;

(*b*) to furnish reports regarding the state of his village, at such places and times as the Deputy Commissioner fixes in this behalf;

(*c*) to report and, if possible, to prevent encroachments on the public paths and roadways in his village;

(*d*) to preserve such stations and marks erected in his village by Government-surveyors as may be made over to his care;

(*e*) subject to any rules issued by the Chief Commissioner, to keep his village in good sanitary condition;

(*f*) to report violations of any rules which the Chief Commissioner may make for the preservation of underwood, forests and trees growing on the village-lands, and for securing to persons entitled to cut wood and enjoy other privileges in the waste-lands of the village the rights to which they are entitled;

(*g*) to collect, or aid in the collection of, all payments due to Government in his village;

(*h*) to report all births and deaths taking place in his village.

The Chief Commissioner may make rules—

[1] adding to the list of duties which a mukaddam is required to perform under this section; and

[2] regulating the liability of persons residing in any village for charges necessarily incurred by mukaddams in the performance of the duties specified in clause (*e*) in respect of such village, and for apportioning such charges among such persons; and

[3] determining the officers to whom reports

under this section shall be made.

Notification No. 2994 293 of 13th May 1891.

I. The sources of the supply of drinking water in the village must be kept pure—

(*a*) If the water-supply is drawn from wells, one or more of these shall be set apart for drinking purposes. A parapet at least two feet high must be made round the wells so set apart. No one shall be allowed to wash clothes or to bathe at any such well or to cast any dirty vessel into it; nor shall any one be permitted to pile filth or rubbish on, or to otherwise defile, the ground within 20 paces of the well. Wells used for drinking purposes must be cleaned out once in every year just before the rains.

(*b*) If the water-supply is drawn from a *nalla* or river the bank of the *nalla* or river must be kept clean. All small nallas leading into it must also be kept clean, as far as possible. Water wanted for drinking should be taken from up the stream above the village; and people should wash their clothes and bathe, &c., *down* the stream, below the place from which water for drink is taken.

(*c*) When the water-supply is from tanks, one of these shall be reserved for drinking purposes. Its banks must be kept clean and no one should be allowed to wash clothes to bathe, or to water cattle in it. If there is only one tank its banks must be kept clean, and wells should (if possible) be sunk below the *bund* of the tank. Drinking water should then be drawn from these wells, and not from the tank itself.

(*d*) No corpses shall be buried in or near the bed of any tank or stream.

(*e*) No hemp or other vegetable matter shall be steeped in wells or tanks which are used for drinking purposes, or in streams, except at the distance of at least 200 yards down-stream from the village site.

II. The mukaddam must mark out on each side of his village the limits beyond which people must go for purposes of nature. These limits ought to be at least 50 yards from the outermost houses of the village. This rule will not be enforced in the case of *infants* or *sick* or *infirm* persons.

III. The streets, lanes and open places in the village must be kept clean. Rubbish and manure collected from them by the village sweepers shall be conveyed daily outside the village to places appointed by the mukaddam and be there pitted.

IV. The house-hold refuse, stable litter and cattle droppings accumulating in private premises shall be daily thrown by the owners into manure pits dug by them for the purpose, or other receptacles within their enclosures: provided that the mukaddam may direct the closing or cleaning out of any such pit or receptacle which is a nuisance to the neighbourhood. Failing the provision of pits or receptacles, as directed in this rule, all such rubbish, litter and cattle droppings shall be removed outside the village site to the public manure pits, or to private manure pits, if there be any or to the fields as the owners may prefer.

V. Chamars must not be allowed to skin or to cut up cattle near the village. A place must be appointed by the mukaddam for this purpose.

VI. Once a year, in October, after the rains have ended, the mukaddam shall have the village cleared of all weeds and jungle, which together with any rubbish that may not have been removed to the manure pits shall be collected outside the village and burned.

Notification No. 4862 of 7th November 1894 as amended by Notification No. 606, dated the 9th February 1899.

Additional duties imposed on mukaddams under Section 141 (1) of the Act—

(*i*) to assist the village watchmen in realizing any dues in cash or kind receivable by them from the cultivators or other inhabitants of the village;

(*j*) to maintain the patwari in the possession of any land appertaining to his office, to recover and pay to him any local cash allowances to which he may be entitled, and to assist him in realizing any dues in cash or kind receivable by him from the cultivators of the village;

(*k*) to report or cause to be reported the death of any patwari whether of his own or any other circle resident in the village, and report or cause to be reported whether the village patwari, if a resident in the village, has been absent therefrom for four consecutive weeks, or, if a non-resident, has failed to visit the village for eight consecutive weeks;

(*l*) to report or cause to be reported the occurrence in the village of any case of cholera, bubonic plague or small-pox or [when the Deputy Commissioner has either specially or generally so directed] any case of epidemic cattle-disease;

(*m*) to preserve all stations and marks of the Trignometrical, Topographical, Revenue, or Forest Surveys erected in that village or on its boundaries, and to report or cause to be reported any injury done to such marks or their removal or destruction;

(*n*) to report or cause to be reported any unauthorised cutting of wood or removal of forest produce and any unauthorised grazing of cattle in any Government forest in the vicinity of the village by persons resident in the village;

(*o*) to assist the patwari and all Revenue or Survey Officers of Government in all matters connected with the survey or settlement of the village and the preparation or testing of the village records, and to cause the attendance of all sharers, cultivators or residents of the village whose presence is required by any such Revenue or Survey Officer;

(*p*) to assist, upon demand, gazetted officers of Government [or when orders to this effect are issued by the Deputy Commissioner, any other specified class of Government servants] who may visit on duty the neighbourhood of his village, in obtaining such supplies as are declared either specially or generally by the Deputy Commissioner to be procurable in the locality, on payment for the supplies at the retail rates of the nearest market town as determined by a tariff, to be ascertained in case of doubt by the Deputy Commissioner and to refer for the decision of the Deputy Commissioner any dispute as to the amount of such payment;

(*q*) to report when he has from any cause failed or been unable to perform any of the duties imposed upon him by section 141 of the Act, or by any of the foregoing rules, or by any rule made under clause [*e*] of section 141 or under sub-section (2) of that section;

(*r*) to forthwith report any information which he may obtain respecting—

(1) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is mukkadam;

(2) the resort to any place within, or the passage through, such village of any person whom he knows or reasonably suspects to be a thug, robber, escaped convict or proclaimed offender;

(3) the commission of, or intention to commit, in or near such village, any non-bailable offence punishable under sections 143, 144, 145, 147 or 148 of the Indian Penal Code;

[4] the occurrence in or near such village of any sudden or unnatural death or of death under suspicious circumstances;

[5] the commission of, or intention to commit, at any place out of India near such village, any act which, if committed in British India, would be an offence punishable under any of the following sections of the Indian Penal Code, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460;

[6] any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property, respecting which the District Magistrate, by general or special order made with the previous sanction of the Local Government, has directed him to communicate information.

Notification No. 2732-294, dated 29th April 1891.

(s) to report ejectment of tenants and enhancement of rent otherwise than as provided for under the law. (This notification applies to the Seoni and Harda Tahsils of the Hoshangabad District only.)

Notification No. 4197, dated the 14th September 1897.

(t) in times of scarcity or famine, and when so ordered by general or special order by the Deputy Commissioner—

(i) to supply such food as may be necessary to any starving wanderer who may come to his village, and to send such wanderer if, or when, he is fit to move to the poor-house or relief-work which is nearest to his village; and to render such account of the expenditure from advances other monies incurred by him in this behalf as the Deputy Commissioner may require;

(ii) to prepare, with the assistance of the patwari, a correct register of persons residing in his village, who from their circumstances are likely to require gratuitous relief, and to include in such register the following classes of persons if they have no one who is able and bound by the custom of the country to support them:—

[1] idiots and lunatics,

[2] cripples,

[3] blind persons,

[4] all who from age or physical weakness are incapable of earning their living,

[5] all persons whose attendance on the sick, or on infant children, in their own homes is absolutely necessary;

(iii) to organize a system of private charity for the relief of persons whose names are entered in the register above mentioned; and when the distress is such that it cannot be relieved by private charity, to make an application for funds to the Deputy Commissioner, through such officer as may have been appointed for this purpose in the local area in which the village is situated, and to carry out such instructions as he may receive from the Deputy Commissioner or such officer for the supply of money or grain required to give the necessary relief;

(iv) to assist in the distribution of relief in money or grain in his village, and to take such action as may ensure that it reaches the proper recipients;

(v) to assist in the management of any children's kitchen or poor-house established in his village, or for the relief of residents thereof.

The reports required to be submitted by mukaddams under this Section or any of the rules framed thereunder shall be made as follows:—

Rules under Section 141 (3).

Nature of Receipt.	Officer to whom to be made.
1. Under clause (*a*) of section 141 [death or absence of village watchmen].	The Tahsildar.
2. Under clause (*b*) of section 141 (regarding state of village).	The officer in charge of the nearest police-station or out-post, unless the Deputy Commissioner directs otherwise.

Nature of Report.	Officer to whom to be made.
3. Under clause (*c*) of section 141 (encroachment on roads).	The Tahsildar.
4. Under clause (*f*) of section 141 (violation of Forest Regulations).	The Tahsildar.
5. Under clause (*h*) of section 141 (births and deaths).	The officer in charge of the nearest police-station or out-post.
6. Under rule (*k*) above (death or absence of patwari).	The Tahsildar or the Revenue Inspector of the circle.
7. Under rule (*l*) above (cases of cholera, bobunic plague, small-pox or cattle-disease).	The officer in charge of the nearest police-station or out-post.
8. Under rule [*m*] above (injury or removal of survey marks).	The Tahsildar or the Revenue Inspector of the circle.
9. Under rule [*n*] above (unauthorized cutting or grazing in Government forests).	The Tahsildar or Forest Officer of the circle.
10. Under rule (*q*) above (failure or inability to perform any of his own duties).	The Tahsildar.
11. Under rule (*r*) above (reports regarding matters likely to affect the maintenance of order or the prevention of crime).	The officer in charge of the nearest police-station or out-post a Magistrate, whichever may be nearer.
12. Report of ejectment of tenants and the enhancement of rent otherwise than as provided under the Law in Seoni and Harda Tahsils of Hoshangabad District.	Deputy Commissioner of the District.

Notification No. 636, dated the 6th February 1895.

Rules under Section 141 (2) of the Act.

I. If any person is required by the mukaddam, in accordance with the rules issued under Notification No. 2994-293, dated the 13th May 1891, to perform, or refrain from performing, any act, and fails to comply with that order, the mukaddam shall report to the Deputy Commissioner and ask for authority to incur such expenditure as may be required to remedy such failure. And thereupon the Deputy Commissioner shall cause a local enquiry to be made by a Revenue Officer not below the rank of a Tahsildar, and may, by order in writing authorize the mukaddam to incur an expenditure, the amount of which shall be stated in the order, and to recover the same from the person so failing.

II. If the mukaddam finds that an establishment, temporary or permanent, is necessary to keep his village in good sanitary condition, he shall make a report to the Deputy Commissioner, who, after a local enquiry made by himself or by an Assistant Commissioner, may, by order in writing—

[*a*] authorize the mukaddam to entertain an establishment, the nature and the cost of which, and the period for which it shall be entertained, shall be stated in the said order; and

[*b*] direct that the cost of the said establishment shall be levied from the cultivators residing in the village by a rate on their rent, and from non-cultivators by a house-tax; the amount of the said rate or tax to be fixed so as to cover the cost of the establishment and no more, and with due regard to the means of the persons so rated or taxed.

III. If any mukaddam finds that is it necessary to construct, repair, or improve any well, tank or reservoir, for the supply of pure drinking water. he shall report to the Deputy Commissioner the necessity for the work and its cost, and the Deputy Commissioner, after a local enquiry made by a Revenue Officer not below the rank of a Tahsildar, regarding the necessity and the cost of the same may, by an order in writing—

(*a*) authorize the carrying out of the work so far as he may think necessary and possible, with due regard to the means of the villagers at a cost to be determined by him and stated in the order; and

(*b*) direct that the cost be recovered from the residents of the village in the same manner as provided in Rule II [*b*];

Provided that the Deputy Commissioner may, by order in writing, exempt from payment any person who, in his opinion, will not derive benefit from the work.

IV. A Deputy Commissioner passing any order under Rules II and III shall at once forward a copy thereof to the Commissioner for information; and the Commissioner may pass such order thereon as he shall think fit.

V. The reports made by mukaddams under these rules shall be on unstamped paper, and may be forwarded by post bearing.

VI. If necessary, the amount payable by any person under these rules will be recovered as provided in section 158 of the Act.

Liabilities imposed by law on land-holders to attach to mukaddams.

142. When, by any enactment for the time being in force, any public duties are imposed on, or public liabilities are declared to attach to, land-holders, their managers and agents and the like, such duties shall be deemed to be imposed on, and such liabilities shall be held to attach to, mukaddams appointed under this Act:

Provided that nothing herein contained shall discharge landholders, their managers or agents or the like from any liabilities imposed upon them by law.

Power of mukaddams to recover certain expenses incurred.

143. Every mukaddam may recover from the lambardars, or sub-lambardars of the village to which he is appointed, his own remuneration, together with any expenses necessarily incurred in the performance of his duties.

Duties of patel.

143-A. It shall be the duty of every patel, in addition to his duties as mukaddam,—

(*a*) to collect and pay into the Government treasury the land-revenue assessed on the survey-numbers or holdings of his village;

(*b*) in respect of his village to report the abandonment of survey-numbers or holdings, the encroachment of ryots on waste-land not included in their survey-numbers or holdings, and the non-payment of revnue or any facts which indicate that default will be made in the payment thereof;

(*c*) to assist the patwari and village-watchman of his village in the recovery of dues to which they are entitled;

(*d*) to prevent the unauthorized cutting of wood in Government forests included in or adjoining his village, and to report any such unauthorized cutting in such forests.

Chief Commissioner may make rules as to patwari.

144. The Chief Commissioner may make rules—

[*a*] providing for the appointment of patwaris in tracts were they have not been already appointed.

Notification No. 1511 of 19th March 1890.

NOTE.—Patwari shall be appointed for plots of land in which proprietary rights have been acquired under the Waste Land Sales Rules, and which have been declared to be villages under section 4, sub-section [8] of the said Act; such patwaries being, whenever possible, those in charge of adjoining circles of malguzari villages, and being remunerated by proprietors and tenants at such rates and in such modes as may be in force in malguzari villages in the vicinity. Provided that if for any reason special patwaries have to be appointed their remuneration may be fixed at such higher rates as may be approved by the Chief Commissioner, not exceeding in the case of proprietors, six per cent, on the revenue assessable on the village.

The Plaintiff was the owner of a waste land plot which he held free of land revenue. At settlement the plot was the property of Government and the sale to the Plaintiff took place after Settlement. The Deputy Commissioner included the Plaintiff's land within the area of a Patwari's circle and on the Plaintiff failing to pay the remuneration of the Patwari as fixed by the Deputy Commissioner, an attachment was issued and the amount recovered. The Plaintiff thereupon sued to get the amount so recovered and also for damages for the wrongful attachment. He also asked for a declaration that he was not liable to furnish what are called in the Land-Revenue Act, village-papers. *Held* that as the Plaintiff was not called upon to furnish village-papers, he had no cause of action to ask for a declaration of right with respect to an abstract question of law in order to meet a possible invasion of his rights.

Held further that under Section 144 of the Land Revenue Act, the Plaintiff could not be called upon to pay the Patwari's remuneration. That Section leaves out of contemplation the liability for the payment of the Patwari's remuneration. It seems to have been understood that that liability was imposed independently of the Act. When fixing the amount of assessment at which the settlement of a mahal should be offered to the proprietor, the Government could provide for the payment of the Patwari's remuneration, but this could not be done in the case of land not liable to any assessment. [*Gopal Hurry Bhiday* vs. *Secretary of State for India through the Deputy Commissioner Nagpur* C. P. L. R. III. P. 100].

[*b*] regulating the manner in which patwaris are to be selected; prescribing the conditions under which they may be appointed; and fixing the limits of their circles and the nature, mode and amount of their remuneration;

[*c*] prescribing the conditions under which

substitutes may be appointed for persons having hereditary claims to the office of patwari, when such persons are unable to act;

[*d*] prescribing the fines which may be imposed on patwaris and their substitutes for neglect of their duty, and stating the circumstances under which they may be suspended or removed.

Note:—The rules under this Section have been printed as an Appendix to Revenue Book Circular III—1.

145. [*Rules by the Chief Commissioner for guidance of Deputy Commissioners.*] *Rep. by Act XVI of 1889, Section 30.*

Chief Commissioner may define duties of patwaris.

146. The Chief Commissioner may make rules prescribing the duties of patwaris,—

(*a*) towards the Government: and may in such rules determine the registers, returns or other papers which they shall keep or furnish, the forms and language in which such registers and returns are to be prepared, the mode of their preparation and attestation, and the dates on which they are to be furnished;

(*b*) towards the members of the village community.

Patwaris' papers to be public documents.

All records and papers which patwaris are required to prepare or keep by any rule made by the Chief Commissioner under this section shall be deemed to be public documents within the meaning of the Indian Evidence Act, 1872, and to be the property of Government.

Note.—The rules under this section have been printed as an Appendix to Revenue Book Circular III—1.

Power to fix amount to be paid by proprietors, tenants and ryots for patwaris.

146-A. (1) The Chief Commissioner shall fix the nature and amount of the contributions to be made by proprietors and tenants in every mahal or in any specified local area and by ryots in every ryotwari village towards the remuneration of patwaris and the defraying of any charges incurred on account of the proper supervision, maintenance and correction of the patwaris' records, and may direct that any or all of such contributions be paid into the Government treasury through the lambardar of the mahal, or the patel:

Provided that, except with the previous sanction of the Governor-General in Council, no proprietor shall be compelled to contribute under this section a sum exceeding six per cent, on the revenue for the time being assessed on his land, or which, when his land is wholly or partially free from revenue, would in the judgment of the Deputy Commissioner be assessable on his land if it were liable to a full assessment.

[2] The contributions fixed under sub-section (1) may be recovered in the same manner as an arrear of revenue payable directly to the Government, and the provisions of section 116 shall be applicable in the case of a lambardar or patel through whom the contributions are payable.

Note.—For rules regarding clearance lease villages, see note under section 144 (a).

For other rules, see appendix to Revenue Book Circular III—1.

Patwaris to produce papers for inspection, and to allow copies to be made.

147. Patwaris shall produce at all reasonable times, for the inspection of all persons interested therein, all records and papers which they are so required to prepare or keep, and shall allow such persons to make copies of such records and papers.

147-A. The Chief Commissioner may make rules regarding village-watchmen, and may in the rules—

(a) provide for and regulate their appointment [punishment], suspension or removal, prescribing the number of village-watchmen who may hold office at one time in a single village, and providing for the appointment of a single village-watchman for two or more villages where such villages would be unable to support separate village watchmen;

(b) determine the character and amount of the remuneration which village-watchmen shall be entitled to demand from the members of the village-community;

(c) define the duties and the mode of supervision of village-watchmen.

(A)—*The appointment, suspension and removal of village-watchmen.*

Notification No. 4932 of the 10th August 1891, as amended by Notification No. 4367, dated 29th September 1899 and No. 4211, dated 21st September 1899.

1. There shall be at least one watchman for every inhabited village, unless where, with the sanction of the Commissioner, a group of small contiguous villages is placed in charge of a single watchman. Every such group shall be treated as a village for purpose of these rules.

2. The number of watchmen holding office in the village shall be as fixed at the last preceding settlement. Provided that no arrangement shall continue under which a watchman is liable to be periodically displaced by another who claims to share in the office. In such cases, the Deputy Commissioner shall decide who is to be recognized as watchman for the purposes of these Rules. Provided also that, with the previous sanction of the Commissioner, the Deputy Commissioner may modify the arrangements made at Settlement, so as to reduce or increase the number of watchman, or to appoint additional watchmen to villages in charge of single watchmen, whenever this is necessary in order to raise the number of houses in charge of a watchman to a minimum of 50 or to reduce the number of houses to a maximum of 200.

3. When, under arrangements made at the last preceding Settlement, the duties imposed on village-watchmen by these rules are shared by two persons, some duties being performed by one and other duties by the other, the Deputy Commissioner, with the previous sanction of the Commissioner, may declare which of the two is to be the village-watchman for the purpose of these rules, and may modify any distribution of remuneration between the two which was made at Settlement.

4. No person shall be eligible for the post of village-watchman who—

(1) is a femal;
(2) is under 18 years of age;
(3) is of unsound mind;
(4) is, in the opinion of the Deputy Commissioner, of bad character;
(5) is, in the opinion of the Deputy Commissioner, physically

unfit to perform the duties of the post.

5. The appointment of village-watchmen shall rest with the Deputy Commissioner. Provided that in zamindaris the Zamindar may nominate to a vacancy, and the Deputy Commissioner shall appoint the person so nominated if he be qualified in accordance with Rule 4.

6. On a vacancy occurring in a post of village-watchmen, the Deputy Commissioner shall appoint a successor from the family of the previous incumbent, the nearest relative being selected who is eligible under the Rules. Provided that, if the vacancy be caused by the dismissal of the previous incumbent for bad charectar, misconduct or disobedience, and the effect of the dismissal would be lost were a member of his family appointed to succeed him, the Deputy Commissioner may appoint an out-sider under the procedure prescribed in the Rule next following.

Provided also that if the nearest relative is disqualified only on the ground of youth, the Deputy Commissioner may appoint him to be village-watchman, in which case the Deputy Commissioner shall appoint a *gomashta* and may fix the amount of the *gomashta's* remuneration.

Explanation.—For the purpose of this rule, "family" shall be held to include relatives by the female as well as by the male side and also connections by marriage.

7. If no eligible member of the previous incumbent's family is forthcoming, or it has been determined to appoint an out-sider under the proviso to the preceding Rule, the Deputy Commissioner may call upon the mukaddam of the village to nominate a candidate within 15 days. If the mukaddam fails to nominate or nominates a candidate who is ineligible in accordance with Rule 4, the Deputy Commissioner shall proceed to make the appointment himself.

Explanation:—If the village-watchman's charge includes more than one village, the mukaddams of all villages included in the charge should be called upon to nominate jointly.

8. A village-watchman may be suspended or removed by the Deputy Commissioner on the report of the mukaddam or of his own

motion—

[1] on the ground of any one of the disqualifications mentioned in Rule 4;

[2] for wilful breach of rule;

[3] for neglect of duty;

[4] for alienation of service land;

[5] generally for misconduct.

(*B*)—*Of the remuneration of village-watchmen*

9. The remuneration of village-watchmen shall be as provided under the wiji-bul-arz of the last preceding Settlement, subject to any changes which may be made by the Deputy Commissioner under Rules 2 or 3.

9 (*a*). Wherever the remuneration of a village-watchman provided under the wazi-bul-arz of the last preceding Settlement consists of dues payable in kind, and such dues are not paid to the village-watchmen before the date fixed for the land revenue instalment next following the harvest to which they relate, shall be convertible into cash at the market rates current.

For the purposes of this rule the current market rates shall be deemed to be the retail prices prevailing at the head-quarters of the tahsil in which the village is situted on the date on which such revenue instalment falls due.

Provided, that if at any time it should appear that the remuneration thus provided is insufficient, and is also below the maximum which might be fixed under Articles 290 and 129 of the Settlement Code, the Deputy Commissioner may, with the previous sanction of the Chief Commissioner, revise the rates of remuneration so as not to exceed the maxima therein prescribed. In making such revision, he shall be guided by the provisions of those articles, and the revised assessment shall be subject to confirmation by the Commissioner, and shall take effect from such date as the Commissioner may direct.

10. When a village-watchman is appointed under these rules

to a village which did not previously maintain one, the Deputy Commissioner, with the previous sanction of the Commissioner, may fix the nature and amount of the contributions which are to be made by the members of the village-community towards the remuneration of such village-watchmen, and may also fix the manner in which such contributions may be collected and paid. The nature of such contributions and the rates at which they are to be paid shall, as far as possible, conform to those in force in neighbouring villages in which a village-watchman has been maintained since the last preceding Settlement.

11. The Deputy Commissioner may order a deduction to be made from the remuneration payable by the village to a village watchman, on the ground of his misconduct or disobedience, and may direct that the amount so deducted shall be paid by the village-watchman in cash within a stated time: Provided that, except with the sanction of the Commissioner, the amount so deducted at any one time shall not exceed Rs. 5.

(C)—*Of the duties of Village-Watchmen.*

12. It shall be the duty of the village-watchman—

(i) to reside in his village, or if he be in charge of more than one village, in such village as is appointed for his residence by the Deputy Commissioner, and not to absent himself for a longer period than 24 hours without the Deputy Commissioner's permission.

(ii) to keep watch and ward over the houses and property of the villagers, performing for the purpose such patrol as may be prescribed by the Deputy Commissioner.

(iii) to arrest and convey to the Police station or outpost of the circle any person who, in his view, commits a non-bailable and cognizable offence, or who has been proclamed as an offender.

(iv) to asisst in the private defence of person or property in accordance with section 97 of the Penal Code, and in the arrest and conveyance to the Police station or out-post of the Police station or out-post of the circle of any person liable to arrest under this section or under section 59 of the Criminal Procedure Code.

(v) to report immidiately to the mukaddam or mukaddam-gomashta of the village [if present in the village at the time] and then to the officer in charge of the Police station or out-post of the circle—

(*a*) the permanent or temporary residence within the village of any notorious receiver or vendor of stolen property;

(*b*) the resort to any place within the village, or the passage through the village, of any person whom he knows or reasonably suspects to be a thug, robber, escaped convict or proclaimed offender, and the movements of wandering gangs through or in the vicinity of his village;

(*c*) the commision of or intention to commit any non-bailable offence within or near the village and the arrival in the village of a convicted thief or of a suspicious stranger;

(*d*) the occurrence within village of any sudden or unnatural death or of any death under suspicious circumstances;

(vi) to report immidiately to the mukaddam or mukaddam-gomashta of the village (if present in the village at the time) and then to the officer in charge of the Police station or out-post of the circle, the occurrence of any cases of *chalera* or *small-pox*.

(vii) to report to the officer in charge of Police station or out-post of the circle, at such periods as may be prescribed by the Deputy Commissioner, the occurrence of all births and deaths within the village.

(viii) if directed to do so by the Deputy Commissioner, to report deaths of village cattle from disease or the attacks of wild beasts.

(ix) to attend at the Police station or out-post of the circle on such dates as may be prescribed by the Deputy Commissioner and to obey the orders of the officer in charge of such Police station or out-post in all Police matters.

(x) to assist the mukaddam or mukaddam-gomashta of the village in the performance of the duties imposed on him connected with the maintenance of survey marks, the reporting of the unauthorized use of Government forest lands, the rendering of assistance to the patwari and Revenue and Survey officers, the procuring of supplies for Government officers, and enforcing the rules for village sanitation.

(xi) generally to assist the lambardar of the village and Government officers visiting the village in the discharge of their duties.

13. When under the terms of the wajib-ul-arz of the last preceding Settlement, any functions other than the above, such as the guarding of granaries and the weighment of grain in transactions between landlord and tenant, are imposed on a village-watchman, for which special remuneration is provided, it shall be the duty of such village-watchman to perform such functions: Provided that, with the previous sanction of the Commissioner, the Deputy Commissioner may cancel or curtail the functions performed by village-watchmen under this rule, and may disallow any special remuneration they may receive in return for the performance of such functions.

14. When there are two or more watchmen in a village, they shall be jointly and severally responsible for performing the duties laid down by these rules unless the Deputy Commissioner defines the extent of each wacthman's responsibility.

Notification No. 5035, dated the 5th November 1894.

Note:—1. The following rule determines the character and amount of remuneration which village-watchmen in regularly settled ryotwari villages shall be entitled to demand from the members of the village community:—

At least one-fourth of the remuneration of the village-watchman shall be contributed by Government either in the shape of a revenue-free survey number or of a drawback from the revenue of the village. The balance of the remuneration payable to the village-watchman shall be realizable from the patel and ryots at a rate on the revenue payable by them, to be fixed by the Deputy Commmissioner, and not exceeding one anna per rupee of revenue.

Note:—III. The insertion of the word "punishment" in clause (*a*) of section 147-A enables the Chief Commissioner to provide by rule for the infliction of a lesser punishment than suspension or dismissal in the cases of village-watchmen guilty of misconduct or disobedience. Under the existing rules for regulating the appointment, conduct and punishment of village-watchmen, a Deputy Commissioner may suspend or remove village-watchmen in certain cases specified in Rule 8, and by Rule 11 may deduct from his remuneration a sum not to exceed (except with the special sanction of the Commissioner) Rs 5 at any one time. The levy of a fine out of his general income is now legalized. Village-watchmen are with few exceptions extermely poor, and a small fine only can be imposed on them. In the rare cases in which they are well-to-do, and may without hardship be more heavily fined, the sanction of the Commissioner can always be obtained. The Chief Commissioner does not therefore propose to make any alteration in the rule.

Existing officers confirmed.

148. All existing lambardars, sub-lambardars, mukaddams, patwaris and village-watchmen shall unless the Chief Commissioner in any specified case otherwise directs, be deemed to have been appointed under this Act.

Lambardar's and other officers' dues recoverable as arrears.

149. Any sums which lambardars, sub-lambardars, mukaddams and village-watchmen are entitled to recover or demand under this Chapter may, if the Deputy Commissioner so directs, be recovered in the same manner as an arrear of revenue payable directly to the Goven-

ment.

Note:—This Section does not empower a Deputy Commissioner to recover arrears of remuneration unless such remuneration is payable in money.

Holders of *sir* land in Sambalpur to provide for remuneration of mukaddams.

150. In each village of the district of Sambalpur all persons holding *sir* land, other than mukaddams, are bound to provide for the due remuneration of the mukaddam of the village; and the Chief Commissioner may make rules for the enforcement of this obligation.

PART—V.

CHAPTER—XII.

MISCELLANEOUS.

Right to mines.

Quarries and fisheries.

151. Unless it is otherwise expressly provided the records of a settlement or by the terms of a grant made by the Government, the right to all mines, minerals, coals and quarries, and to all fisheries in navigable rivers, **** shall be deemed to belong to Government, and the Government shall have all powers necessary for the proper enjoyment of such rights:

Provided that, whenever in the exercise by the Government of the rights herein referred to over any land the rights of any persons are infringed by the occupation or disturbance of surface of such land, the Government shall pay to such persons compensation for such infringement, and the amount of such compensation shall be determined as nearly as may be in accordance with the provisions of the Land Acquisition Act, 1870.

Note:—In the absence of any special reservation the Malguzar has the same rights over the buried bricks and stones that Government would have had, if it had not settled the proprietary rights in the lands with him. (*Tikaram Sao* vs. *Laldas Bairagi* C. P. L. R. VI. P. 119).

Exclusive jurisdiction of revenue-authorities.

152. Except as otherwise hereinbefore provided:—

(*a*) no Civil Court shall entertain any suit instituted, or application made, to obtain a decision or order on any matter which the Governor-General in Council, the Chief Commissioner or a Revenue or Settlement Officer is, by this Act, empowered to determine or dispose of; and in particular,

Matters excepted from jurisdiction of Civil Courts.

(*b*) no Civil Court shall exercise jurisdiction over any of the following matters:—

[1] any matter provided for in sections 40, 41, 42 and 89 as to waste-lands:

[2] the claim of any person to have an assessment offered to, or sub-settlement made with, him:

[3] the amount of revenue or rate to be assessed on any mahal, share or portion of a mahal under this or any other Act for the time being in force:

[4] questions as to the validity of any engagement with Government for the payment of land-revenue, or of any

agreement entered into by superior or inferior proprietors in a settlement or sub-settlement:

[5] claims connected with or arising out of any process enforced on account of refusal to accept the assessment offered in a settlement or sub-settlement by the Settlement Officer or Deputy Commissioner;

[6] the amount of the allowance or rent fixed under section 61 or 62:

(7) the re-distribution according to established custom, by a Settlement Officer, of land comprised in a mahal:

(8) the formation of the record-of-rights, the preparation, signing or attestation of any of the documents contained therein, or

the notification of settlement:

[9] any matters provided for or referred to in section 73, 74 or 130 as to lands held or claimed to be held free from revenue, exept rights arising under any contract between the Government of India and grantees of land:

(10) claims connected with, or arising out of, the collection of revenue, or any process enforced on account of an arrear of revenue, or on account of any sum which is under this or any other Act realizable as revenue:

(11) claims to set aside, on any ground other than fraud, sales for arrears of revenue.

(12) corrections of entries or revisions of records under sections 120, 121 and 122:

(13) questions connected with or arising out of the exclusion of a proprietor from forest-land, and the direct management of such land under section 124-A;

(13-*a*) the distribution of the land or allotment of the revenue of a mahal by partition; or the determination of the rent to be paid by a co-sharer for land held by him after the partition in the mahal or the patti of another co-sharer;

(14) claims to the office of patwari, lambardar, sub-lambardar, mukaddam, patel or village-watchman, or in respect of any injury caused by exclusion therefrom, or to compel the performance of the duties thereof:

(15) claims to compel the performance of any duties imposed by this Act on any Revnue or Settlement Officer.

In all the above cases jurisdiction shall rest with the Revenue-authorities only.

Notes:—1. When a district is under Settlement and a notification under the Land Revenue Act having been issued that a Settlement Officer is to determine whether a particular land is *sir* or not, under Sec. 152 [*a*] of the Land Revenue Act, the ordinary Civil Courts are ousted of their jurisdiction in the matter. *Held* that if in spite of this the Court of an Assistant Commissioner entertained the suit and decided the question that the land is *sir*, the decision will be of a Court not having jurisdiction.

If the case might have appealed and carried in appeal to the Judicial Commissioner's Court, the Judicial Commissioner will not deal with the case under Sec.622 of the Code of Civil Procedure. (*Shrawan* vs. *Ragho Kunbi* C. P. L. R. VI P. 17).

2. The Plaintiff in this case instituted a suit in a Civil Court for possession of *sir*-land. While the case was pending a Notification was issued by the Chief Commissioner declaring the District to be under Settlement. The Lower Appellate Court held that under Section 152, Clause (*a*) of the C. P. Land-Revenue Act, the jurisdiction of the Civil Court to try a case of this kind was ousted, even though the suit had been instituted before the District came under Settlement.

Held that the view taken by the Lower Appellate Court was not correct as Section 152, Clause [*a*] of the Act does not say that when a suit has been already correctly instituted and validly entertained by a Civil Court the Court shall cease to exercise jurisdiction for the final disposal of that case when a Settlement Officer acquires jurisdiction to determine a question arising out of it. [*Idu Miyan and Ismail* vs. *Bala Kunbi* C. P. L. R. VIII. P. 21].

3. The jurisdiction of the Civil Courts is barred by clause (*a*) of Section 152 of the Land Revenue Act in matters in dispute between the parties enquired into and disposed of by a Settlement Officer under the provisions of Section 65 (*a*) of the same Act.

The provisions of the proviso of Section 36 of the Land Revenue Act clearly apply only to suits which have been withdrawn by the Chief Commissioner from the cognizance of the Civil Court during the pendency of a settlement. (*Rao Sadashiva Rao Malguzar* vs. *Girdhari*, *Balwant*, *Nanhe*, *Durjan*, *Raisa and Duryao* C. P. L. R. IX. P. 33.)

4. A suit instituted under Section 57 of the Tenancy Act to eject a tenant in default of his agreeing to pay an enhanced rent and resisted on the ground that the Defendant is an occupancy tenant, is not a suit instituted to obtain a decision regarding the status of a tenant occupying land in a mahal, and as such is cognizable by a Civil Court. (*Mukandram Shukal* vs. *Lalsing Rajput* C. P. L. R. IX. P. 41).

5. A notification issued by the Chief Commissioner under Section 28 of the Land-Revenue Act declaring a certain district to be under Settlement does not deprive the Civil Courts situate in that district of their jurisdiction to try suits under Section 57 Sub-section (2) of the Tenancy Act, whether or not incidentally there may arise in them a question regarding a matter which a Settlement officer is required to decide or to enter in the record-of-rights. (*Manbodh* vs. *Asai* C. P. L. R. X. P. 17).

6. Distinction between the terms *muafi-Khairati* and *malik-makbuza muafidar-malguzar* explained. (*Mooneerkhan*, *Kodukhan*, *Faiz khan and Aliyar Khan* vs. *Mangulkan and* Mt: *Shanoorbi* C. P. L. R XI. P. 129).

7. After an imperfect partition has been effected the mutual rights of the co-sharers depend on the partition and the intentions of the partitioning officer as evidenced by the partition proceedings. After partition the Civil Courts cannot determine the rights of the co-sharers under section 136 N (2) of the Land Revenue Act. That section is a rule for the guidance of the partitioning officer and must be read with section 152 (*b*) (13 *a*) of the Act. Both sections refer to the action of the Deputy Commissioner when making the partition. Neither of them refers to the wish of the co-sharers or

gives him an option in the matter. (*Bisandas Marwadi* vs. *Bhagwant Atmaram* (*minor*) *through Laxman Govind* C. P. L. R. XII. P. 137.)

8. As between the co-sharers of a mahal a Civil Court has jurisdiction to apportion the revenue assessed on such mahal. (*Janki Prashad and others* vs. *Balmukand and others* C. P. L. R. XIV. P. 107).

9. In this case there had been a private partition by metes and bounds, some years ago, of a village and the possession of the different shares remained with the co-sharers to whom they were respectively allotted until some of them interfered with the arrangement by suing some of the Plaintiffs tenants. The Plaintiffs sued for a declaration that certain fields specified in the plaint should be declared to be their separate fields and that possession of those fields should be given to them. *Held* that Sections 136 and 152 of the Land-Revenue Act do not bar this suit as there was no question of suing or applying for the partition of a mahal, nor is there any question of the distribution of the land or allotment of the revenue of a mahal by partition. (*Sujanmal Sheodass* vs. Mt: *Bhagabai Ganoba Yeshwantrao and others* C. P. L. R. VI. P. 103).

10. A Revenue officer making an imperfect partition is not empowered to determine the respective liabilities of the co-sharers for the revenue assessed on the whole mahal. Where the liabilities have been so determined a Civil Court is not debarred by the terms of section 152 (*b*) (13-*a*) of the Land-revenue Act from declaring the extent to which as amongst themselves the co-sharers are respectively liable. (*Duryao, Minor, Guardian Mt Bhiwara* vs. *Tukaram and others.* N. L. R. 1. P. 100).

For what village-cesses suit lies.

153. No suit shall lie in any Civil or Revenue Court for the recovery of any village-cess which has not been sanctioned by the Chief Commissioner and also either recorded at a settlement or under Section 132, clause (*h*).

Limitation of claims for compensation in case of waste-land demarcated as property of Government

154. Whenever, at any settlement made before this Act comes into force, waste-lands have been demarcated as the property of Government, no claim of any person to, or in respect of, such lands shall be entertained by any Civil Court after the expiration of three years from the date of such demarcation.

Restriction on Revenue and Settlement Officers trading and holding land.

155. No Revenue or Settlement Officer, and no, person employed in any Revenue or Settlement office, shall, except with the express permission of the Chief Commissioner,—

[*a*] engage in trade, or be in any way concerned, directly, or indirectly, or in any commercial transaction, or in the purchase or hiring of land, in the district to which he is appointed, or in which he is employed;

[*b*] purchase or bid for either in person or by agent, in his own name or in that of another or jointly or in shares with others any property which may be sold by order of any Revenue-authority in such district.

The Chief Commissioner may delegate to Commissioners of Divisions or to Deputy Commissioners the power of granting the permission mentioned in this section in the case of any specified class of officers.

Nothing in this section shall be deemed to preclude any person from becoming a member of a company incorporated under the Indian Companies Act, 1866.

Note:—See now the Indian company's Act VI. of 1882.

When mahal managed or farmed, or upon proclamation under section 98 or 103, rent payable to Deputy Commissioner.

Payment to proprietor in anticipation of due date.

156. When any mahal is managed or let in form under section 57 or 58, or when either of the proclamations mentioned in sections 98 and 103 has been made, all sums due to the proprietor in respect of the mahal, share or land mentioned in any of hte said sections, shall be payable only to the Deputy Commissioner or Settlement Officer, his agent or lessee; and no payment made to such proprietor inanticipation fo the usual period for such payment shall, without the sanction of the Deputy Commissioner or Settlement Officer, be credited to the person making the same in account with the Deputy Commissioner or Settlement Officer, his agent or lessee.

Recovery of balance due by farmers.

157. When any land has been let in form under the provisions of this Act, any revenue due from the farmer in respect of such land may be recovered from him or his surety as an arrear of revenue payable directly to Government.

Recovery of miscellaneous revenue.

157-A. Rents, fees and royalties due to the Government for the use or occupation of land or water [whether the property of the Government or not] or on account of any products thereof, and all moneys falling due to the Government under any grant, lease or contract which provides that they shall be so recoverable, may be recovered under this Act in the same manner as an arrear of land-revenue.

Note:—Section 157-A provides for the collection as an arrear of land-revenue of all miscellaneous revenue and cognate dues which have not been assessed under the Act [section 91]. This will legalize the collection by summary process of rents of fisheries, royalties on mines and quarries, and will also enable rents of *nazul* sites, or the revenue payable on building sites which were sold outright under the former *nazul* rules, to be collected as land-revenue instead of as heretofore by regular suit in a Civil Court.

Recovery of revenue due when Act comes into force, and of money payable under Act.

158. All land-revenue due when this Act comes into force, and all penalties or other moneys payable to, or recoverable by, an officer of Government under this Act, shall be recovered from the persons from whom they are due and from the sureties [if any] of such persons as if such land-revenue, penalties or moneys were an arrear of revenue payable directly to Government due under this Act by such persons and their sureties.

Past proceedings for collection of revenue legalized.

159. All proceedings taken before this Act comes into force for the collection of the land-revenue or the realization of arrears thereof shall be deemed to have been taken in accordance with law.

Chief Commissioner may empower persons by name, or confer powers on classes.

160. In conferring powers under this Act the Chief Commissioner may empower persons by name or classes of officials generally by their official titles.

Chief Commissioner may vary or cancel orders.

161. The Chief Commissioner may vary or cancel any order conferring powers under this Act.

Penalty for failure to perform duty or abuse of authority by mukaddam or agent.

161-A. Any mukaddam or agent of a mukaddam who without reasonable excuse fails to perform any duty imposed on him by this Act or the rules made thereunder, or abuses any of the powers conferred upon him by this Act or any such rule, shall be liable, on the order of a Deputy Commissioner, to a fine which may extend to fifty rupees, and, in the case of a continuing failure, to a fine of ten rupees for each day during which the failure continues.

Penalty for neglecting orders of mukaddam or agent.

161B-. Any person who neglects or disobeys a reasonable order made by a mukaddam or agent of a mukaddam in pursuance of the duty imposed upon him by Section 141, clause (*e*), shall be liable, on the order of a Deputy Commissioner, to fine which may extend to twenty rupees, and, if the neglect or disobedience is continued, shall also be liable to a fine of five rupees for each day during which the neglect or disobedience is continued.

Note.—Sections 161-A and 161-B, providing for the punishment of mukaddams failing to perform their duties, and of persons disobeying the orders of mukaddams, respectively, were formerly so worded that the fines permitted by these Section could only be imposed after regular criminal proceedings. As now amended they empower the Deputy Commissioner to impose fines without the delay and trouble of a regular criminal trail, the necessity for which rendered the Section as originally worded practically inoperative. While, however, summary powers are thus conferred on the Deputy Commissioner in respect of cases of this kind, his action will still be of a quasi-judicial nature; and it is necessary that he should record written proceedings in each case, which should clearly show the nature of the Act or omission charged against the person fined, that the charge was fully explained to him, that he was given an opportunity of explaining or justifying his failure to comply with rules, the final order, and the grounds on which it is based.

Chief Commissioner may make rules and attach penalty to breach thereof.

162. The Chief Commissioner may, with the previous sanction of the Governor-General in Council, make rules consistent with this Act for carrying out its provisions, and may attach to the breach of any

such rule, or of any other rule made by him under this Act, a penalty which may extend to two hundred rupees, or when such breach, is a continuing breach, to fifty rupees for each day during which such breach continues.

All powers to make rules conferred by this Act on the Chief Commissioner shall be exercised subject to the control of the Governor-General in Council, and may be exercised from time to time as occasion requires.

No rule made by the Chief Commissioner under this Act shall take effect until it has been published in the local official Gazette.

All such rules, when so published, shall have the force of law.

Notification No. 2877, dated the 9th July 1903. No. 241, dated the 10th July 1903.

Note:—The Officiating Chief Commissioner, with the previous sanction of the Governor-General in Council, is pleased to attach to the breach of Rule V. of the rules published with Notification No. 7484, dated the 26th October 1894, as amended by Notification No. 2876, dated the 9th July 1903, a penalty which may extend to two hundred rupees or, when such breach is a continuing breach, to fifty rupees for each day during which such breach continues.

SCHEDULE.

[ENACTMENTS REPEALED].

Repealed by the Repealing and Amending Act, 1891 (XII of 1891).

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